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June 1980

ALASKA'S CULTURAL RESOURCES

by Raymond C. Leicht

**A CULTURAL RESOURCES
HANDBOOK FOR ALASKANS--**

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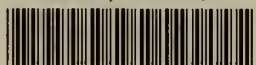
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by Raymond C. Leicht

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RAYMOND C. LEICHT is an archaeologist on the Bureau of Land Management Alaska State Office staff. Along with his responsibilities as author of this publication, Dr. Leicht reviews Antiquities Act Permit Applications and advises for or against granting the permits. He also studies land use permits and recommends actions to protect cultural resources that might be affected. With District Office archaeologists, he assists in monitoring archaeological and historical research, discusses cultural resource work with students and interested civic groups, and works with other agency staffs on matters that affect cultural resource management.

The author expresses a debt of gratitude to C. M. Brown, historian, BLM Alaska State Office, for preparing the section of this publication titled, "A Brief History—from Alaska's Discovery in 1741 to today."

All over the world, scientists have sought and studied relics, or cultural remains, that human beings have left behind through the ages. These relics often tell us how long man has lived in a place, the ways he gathered food and sheltered his family, how he worshipped, and other facts that help us piece together the story of human life on Earth. We call these remains resources because of their value to our understanding and appreciation of our heritage.

The Bureau of Land Management (BLM) is the Federal agency that manages many acres of public land in Alaska. The Bureau also has the responsibility to find, protect, study, and interpret cultural resources on the public lands. Not enough archaeologists and historians can be hired to do this immense job alone.

Other workers, travelers, and vacationers who are not professional archaeologists or historians are likely to find cultural resources anywhere in Alaska. This handbook is designed to acquaint these people with the kinds of cultural resources they may find, laws that affect these resources, and ways to report their finds to the proper authorities. If you have questions, you are invited to contact the BLM archaeologists in the Alaska State Office, Anchorage, or in either of the District Offices. Here are the addresses:

<i>Bureau of Land Management</i>	<i>Bureau of Land Management</i>
<i>Alaska State Office</i>	<i>Anchorage District Office</i>
<i>701 C Street, Box 13</i>	<i>4700 East 72nd Avenue</i>
<i>Anchorage, Alaska 99513</i>	<i>Anchorage, Alaska 99507</i>

*Bureau of Land Management
Fairbanks District Office
P.O. Box 1150
Fort Wainwright, Alaska 99707*

Cultural Resources

Tell Mankind's Story

WHAT CULTURAL RESOURCES ARE

In general, cultural resources are anything that human beings have made. Examples are buildings, tools, pipelines, and trails. Even garbage dumps are cultural resources. We could say that everything man has ever made and left behind, from earliest times to the present, is a cultural resource.

Our government and scientists often are most interested in cultural resources *that were important in human events*. These resources may be buildings or ruins of buildings, works of art, and even places where great events took place. They are records of our Nation's heritage.

Since most human history took place before A.D. 1900 and little is known about earliest times, we generally examine pre-20th century cultural resources to learn about human cultural development and heritage. Both prehistoric and historic remains tell us about the course of human events, from their beginnings until today. In Alaska the 9,000-year-old Dry Creek site near the Alaska Range is an example of one of the earliest used by human beings. On the North Slope, hunters still use a small hill from which prehistoric hunters watched for caribou.

Cultural resources include material remains, such as tools, as well as the places where significant human events occurred. Some places are cultural resources even though no evidence of the event remains. Such a resource is the site of the 1935 Will Rogers/Wiley Post air crash near Barrow.

Most prehistoric and some historic sites are below or near ground surface, and archaeological techniques are needed to recover, analyze, and interpret the findings. Historians or architectural historians often must be called on to properly investigate above-ground historic buildings and other structures. Paleontological resources (fossils, plants, and animals) are not considered "cultural resources," although they often are found with cultural remains and their management is similar.

WHY CULTURAL RESOURCES ARE IMPORTANT

Cultural resources cannot be measured in terms of dollars and cents. They must be viewed for their heritage value. Cultural resources give us information about historic and prehistoric human cultures--their geographical distribution, their time range, where the people came from, what happened to them, and what they made and did.

This information also is important because we and our civilization are the products of what has gone before us. Our present (and future) attitudes, values, ideas, and material culture have been shaped largely by our past. By studying prehistory and history we can appreciate the forces that have operated to bring us where we are. For example, from archaeological research, we have knowledge about prehistoric Eskimo tools, weapons, trade, and dwellings. This knowledge testifies to the Eskimos' remarkable adaptability and ingenuity in one of the harshest environments of the world.

Knowledge about human potential and ability in different environments adds perspective to our present, showing us what we may be capable of achieving and how we might deal with future problems. Everyone should share this knowledge. Unfortunately, we all are deprived of our right to this knowledge when a cultural resource is destroyed. Unless the data have been properly recorded and analyzed, the knowledge is lost forever.



VANZANT, F.J. VANDEWALL AND
 ROBINSON AT U.S. CUSTOM HOUSE
 MOOSE CREEK, 40 MILES RIVER, ALASKA
 APRIL, 1905

LENONT.
 D.17.

This fine log building was the U.S. Customhouse, also used as a roadhouse, at Moose Creek in the Fortymile River region of Alaska. The photo is a copy of one taken by an unknown photographer in 1905. The building was burned down about 1950. (Photo courtesy Eagle Historical Society)

Proper recording and analysis are done by trained professional archaeologists, historians, or architects, depending on the type of cultural resource. Proper recording involves precision drawings, maps, and photographs, as well as complete written descriptions.

Often, recording is followed by analysis of recovered materials. Careful excavation, recording, and analysis of archaeological data, such as stone and bone artifacts and pottery, can reveal information about the people who used the site. For example, we can learn about the tools and weapons used and how they were manufactured; trade relationships; dwelling types and dimensions; in which seasons the site was occupied; preferred pottery vessel types and clay sources; paleo-environment and food preferences (as determined from pollen, seeds, and proportion and types of animal bones).

Artifacts and cultural remains are only half the story. In order for experts to record and interpret details accurately, the original location or context of these materials must be preserved. If a party of prehistoric hunters camped on a ridge, whatever they left behind is buried over time. If another prehistoric group later camped on the same spot, two distinct cultural layers may be found on the site. Although the two camps may have been used hundreds of years apart, the cultural layers may be separated from each other by only a few inches of soil. A bit of pottery from the early group might lie only slightly below an arrowhead dropped by the later group. If the soil containing these artifacts is disturbed, the investigator cannot tell how the arrowhead relates to the pottery or how the artifacts of one level relate to each other and to those of the other level. If the levels contain charcoal that can be dated, any mixing of levels will make it impossible to tell the age of the levels.

The location of artifacts on the surface is as important as their location in the ground. It is important that surface context also be preserved. Unless the original context or position is properly recorded, the fragile record of a past group of people is destroyed forever, even if the remains are saved.

We expect an increase in activities which change the face of the land in coming decades. The result is likely to be that cultural resources will be disturbed and some will be damaged beyond repair. We cannot grow or plant another archaeological site or historic structure as we can an endangered plant species. Cultural resources are fragile. Once they are gone, they are gone forever. And they are disappearing fast.

The burden of preserving our cultural heritage and passing the information on to our children rests on our shoulders. Only through our concerted efforts will future generations benefit from this information.

THE BLM INVENTORY AND PROTECTION OF CULTURAL RESOURCES

Several laws have been passed requiring identification and protection of cultural resources on public lands. In carrying out



BLM archaeologists analyze stone artifacts in the BLM Resources Laboratory, Fairbanks, Alaska. (*BLM staff photo*)

the letter and spirit of these laws, the BLM has an on-going program to identify and protect cultural resources on public land.

A major part of the BLM program is inventory and nomination of significant sites to the National Register of Historic Places. Because the land area under BLM jurisdiction is so huge and the amount of money for funding cultural resource work is so small, we cannot walk over every foot of public land looking for such resources. We estimate that about one percent of public land in Alaska has been intensively surveyed on foot for cultural resources.

We are concentrating our present inventory work on compiling known or existing data on historic and prehistoric sites in specific regions of Alaska, such as Southcentral and the Upper

Yukon. We will follow those studies with sampling studies, in which parts of a region will be surveyed on the ground. The findings will be used to predict the types, distribution, and density of cultural sites that are expected for the entire region.

Data from these studies will be of value in general land use planning. These inventories, however, do not take the place of 100 percent on-the-ground field surveys, which are required for specific land-modifying activities, such as road and pipeline construction. (See page 11.)

Another important part of the BLM cultural resource program in Alaska is protection of cultural resources known to be deteriorating or threatened by human- or natural-caused destruction. We know of many more such properties than can be given necessary attention.

A major effort has taken place at Fort Egbert, an early 20th century military outpost in east-central Alaska. The fort is a National Historic Landmark. Since 1975, the BLM has stabilized the major standing buildings from the original fort and plans to restore and interpret to the public some of the fort's important features.*

On the Seward Peninsula, near Cape Nome, the BLM has started work to save the Nuk site. This is an important late prehistoric Eskimo beach site that had been damaged by a storm. The few remaining houses were being eroded by sea wave action. Salvage excavation was the only means of recovering precious information from the site. A threatened archaeological site is not always excavated if there are other ways to protect it. In fact, even controlled excavation is considered destructive. BLM excavates only when there's no other way to preserve a site's scientific information.

In addition to stabilization and excavation, BLM protects cultural resources by placing signs, fences, or patrols near sites,

*A detailed account of the archaeological and historic research done at the fort is published as BLM-Alaska Technical Report 2. The title is "Fort Egbert and the Eagle Historic District, Summer 1977." Copies are available for \$2.50 each at the BLM Public Room, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.



The BLM stabilization project at Fort Egbert began with rebuilding the foundations, as for the Quartermaster's stables shown here. *(BLM staff photo)*

controlling erosion and fire, relocating the site or closing it to the public, and withdrawing the site from various types of entry.

WHAT MAKES A CULTURAL RESOURCE SIGNIFICANT

Many people view cultural resources, such as stone-flake surface scatters or historic structures, as all basically alike. They feel these resources are not significant. This is unfortunate. You may have heard the comment, "If you've seen one mining or trapping cabin, you've seen them all." Yet, without adequate knowledge about the specific cabin, we cannot know what happened there or whether or not fine details of construction might distinguish it from similar cabins. When we see stone flakes scattered on the surface, we have no way of knowing, without excavating, what lies beneath the surface. The surface flakes could tell us something about tool-making techniques, material sources, trade, and even Old World ties.

Several questions must be answered to determine whether or not a historic or prehistoric cultural resource is significant. One question is, Does the district, site, building, structure, or object possess integrity? That means, is an old roadhouse or cabin in its original location and setting or has it been moved or has the setting destroyed its original character? Are the objects that were associated with a historic building or district still in their original location? If not, their significance could be reduced. Are the materials and workmanship original and do they add to the feeling and association of the building and its setting? How well preserved is the cultural resource? Has the archaeological house pit been totally excavated or ravaged by vandals; has the early steam locomotive weathered beyond recognition?

Significance is often established by the events or persons associated with the cultural resource. A good case can usually be made for significance if we know that the cultural resource played an important part in the local, state, or national history. (For example, Erskine House, in Kodiak, represents economic factors very important in Alaskan history.) Similarly, cultural resources associated with the lives of important persons from the past could be considered significant. An example is the House of Wickersham in Juneau.

Other criteria for determining significance concern the physical aspects of the cultural resource itself. Is there something about the construction or workmanship of a particular district, site, building, structure, or object that makes it unique, rare, or representative of a particular time period or style of architecture? For example, the Episcopal Mission at Arctic Village is significant because it represents the log and sod construction employed in this Arctic region for large community buildings. The Sally Carrighar House in Nome is significant because it is the best remaining example of a Nome Gold Rush mansion.

Whether the cultural resource has yielded or may be likely to yield information important in history or prehistory also helps determine significance. To answer this question one needs detailed knowledge of the history or prehistory of an area, as well as knowledge of the research questions being asked by scholars



Power's Store in Chicken, Alaska, was built about 1908. Note the uncommon vertical log construction of the original store (back part of structure). (*Photo by Marion Weiler*)

about the archaeology or history of the area. A seemingly insignificant scattering of stone flakes on the ground could be extremely valuable if it sheds light on early human migrations into the New World or on some other vital research questions.

Two final criteria must be considered when evaluating significance. One is the interpretive/management value of the cultural resource. Although an archaeological site might have lost its integrity through vandalism, it still might illustrate for the public the prehistory of the area. The same is true for historic cabins and other historic resources. A final criterion is the sociocultural value of a cultural resource to an ethnic group. Objects, structures, or places which have special religious or spiritual importance to Alaskan Natives (such as a traditional caribou observation spot) clearly qualify as significant, as do other cultural resources that maintain a group's heritage or its existence.

Age is important, once significance has been determined. Ordinarily, cultural resource properties that achieved significance within the past 50 years are not considered eligible for the National Register of Historic Places. Exceptions do occur in the case of cultural values of exceptional importance, such as rare aircraft from World War II, or even the place where the Alaska Native Claims Settlement Act was ratified in 1971.

Determining significance is not simply a matter of checking off a list of criteria. The criteria are useful guideposts, but qualified professionals are needed to deal adequately with them—to research thoroughly a particular cultural resource, to obtain opinions from other historians or archaeologists, and to speak to other individuals knowledgeable about the cultural resource. For most cultural properties, significance is not obvious or clear cut, and conflicts often occur when the criteria are applied. For instance, a trapper's cabin which reveals very rare Old World construction techniques might be in a sad state of disrepair, or might be only 40 years old. Is it significant and worthy of being preserved, or should it just be recorded and left to the ravages of time? The professional judgment of experts is needed to weigh the evidence and make a case for or against significance.

The Public Affects Cultural Resources in Many Ways

People and organizations that use public land in Alaska should be aware that their activities can destroy cultural resources in a variety of ways. Those who change the surface of the land should comply with requirements of the BLM cultural resources management program. Basically, the cultural resources management program is concerned with four types of activities: development, recreation, scientific investigation, and relic collection.

DEVELOPMENT

Development refers to activities related to commercial, industrial, and residential use of the land. Development on public land in Alaska takes several forms. It may be energy exploration, mining, road and pipeline right-of-way construction, hydroelectric projects, powerline construction and maintenance, and public water installations. These types of activities generally change the surface of the land in some way and therefore, concern the BLM cultural resources management program.

Before any public lands can be modified, or changed, a professional inventory and evaluation of cultural resources must be made in the project area. This investigation is performed by a cultural resources specialist (an archaeologist or historian), employed by BLM or under contract to the potential user of the land. Standards for field work and reports for the cultural resources inventory are provided by BLM and may be obtained from the BLM Alaska State Office or District Offices.

The BLM cultural resources specialist, in coordination with the State Historic Preservation Officer, must then determine whether the proposed activity will disturb cultural resource properties. If no cultural resources are in the project area or if the project can be designed so that cultural resources are avoided, a permit may be issued for the project to proceed unless there are conflicts with other resources.

If, however, the proposed activity *will affect* a cultural property listed on the National Register of Historic Places or eligible for entry on the Register, additional steps must be taken. The BLM cultural resources specialist and State Historic Preservation Officer must study the project and determine how the cultural resource will be affected. The Advisory Council on Historic Preservation also is formally notified and comments from the Council obtained before permission can be given for the project.

Potentially lengthy consultation with the Advisory Council can be eliminated by simply planning projects so that they

avoid cultural resources. This is not always possible, however. Sometimes, the BLM may allow the proposed project to proceed, after effects on the cultural resource have been lessened, following consultation with the State Historic Preservation Officer and Advisory Council. Such mitigation can be done in a number of ways, including excavation, placement of signs and fences, and relocation of the cultural resource. The BLM has final authority to reject a permit for an activity if cultural resource requirements are not met.

Cultural resources must be considered in the earliest planning of a proposed activity. If cultural resource requirements are put off until planning is well along, the project could be delayed by the Advisory Council notification process and any required mitigation.

RECREATION

Vast wilderness, bountiful natural beauty, and diverse geography make Alaska popular among people who enjoy outdoor recreation. Alaska's population is expected to increase, and people will have more leisure time. More roads will be built and other ways to reach remote areas will be available. We can also expect that more people will seek outdoor recreation on public land.

As demands for recreation use surge, so do potential threats to cultural resources. As with development activities, most people do not destroy cultural resources intentionally, but the damage is irreparable. An ORV driver seldom realizes that his motorcycle or snowmobile has marred an archaeological site simply by traveling over its surface. Nor do vacationers camped and parked outside designated areas realize how they could harm cultural resources in the area.

The BLM permits a number of different recreational activities on public land in specific areas, after its staff carefully considers how the activities may affect cultural and other resources. From the BLM State Office or District Offices, you may obtain information on recreation activities available on public land and

some cautions to observe. If you and other recreation enthusiasts follow the guidelines of the BLM recreation program, you will have done your part in helping to preserve cultural resources and other fragile values on public land in Alaska.

SCIENTIFIC INVESTIGATION

In Alaska, most cultural resource investigations center on archaeological surveys and excavations. Archaeological research is conducted differently than it was in the past. Today's archaeological projects must be conducted so as to cause the least possible disturbance to the surroundings. Carefully considered are potential impacts the research might have on endangered plants, wildlife, scenic quality, and other resources. Excavations may be prohibited on sites of overriding national significance or on those important to an ethnic group.

In addition, anyone wishing to conduct archaeological investigations on public land must meet strict professional requirements. Archaeologists working on public land must use specific research designs that include project objectives and hypotheses.

BLM and Geological Survey archaeologists excavate a site in the National Petroleum Reserve in northern Alaska. Although it is August, workers wear down parkas to ward off the arctic chill. *(BLM staff photo)*



In essence, there must be good justification for approving the project.

Along with the standard description, analysis, and interpretation of sites and artifacts, reports must contain other information. The investigator must describe the area examined and evaluate archaeological resources found, discussing how they help us understand a wide range of questions about the archaeology of the area. There must be discussion of how the material investigated relates to that from other cultures in the area or region. Properties on the National Register or eligible for entry must be identified. All objects collected must be cataloged. Finally, the archaeologist must report the results of his work to other members of his profession and the public.

The scientific demands of the profession make archaeological survey and excavation extremely costly and exacting. An enormous amount of preparation and planning go into each investigation. In the field, workers spend long hours during the day looking for sites or digging them, while in the evening, they catalog and discuss artifacts. When the field season is over, the investigators take collected materials to the laboratory for in-depth study. Finally, the materials are placed in an acceptable museum for storage. Generally, for every hour they spend in the field, archaeologists must devote two hours for laboratory analysis and report preparation.

Before beginning research on Federal lands, an archaeologist must obtain from the appropriate land managing agency a permit to excavate or remove archaeological resources. These permits are issued only to responsible, qualified individuals or organizations for the purpose of furthering archaeological knowledge in the public interest. Information on how to apply for an excavation permit may be obtained from the Alaska State Director, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.





This Arctic Slope archaeological site was looted, probably by vandals in search of valuable artifacts like carved ivory. (*BLM staff photo*)

RELIC COLLECTION

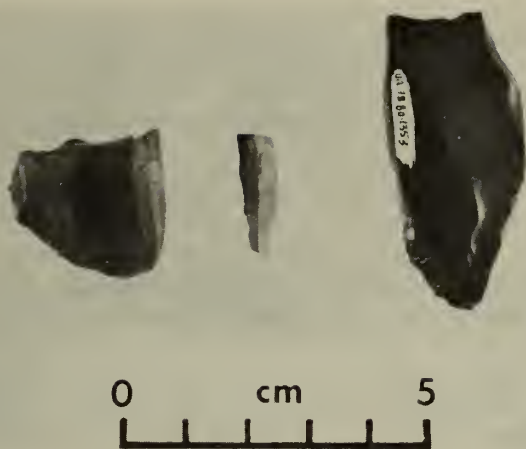
Many people pick up artifacts and other relics of archaeological and historic interest that they find along trails or near campsites. Although not authorized, relic collection in Alaska is widespread. Some collectors are unknowing amateurs who casually pick up archaeological resources on the surface, like old stone implements or tools. But others are plunderers who systematically seek and dig up prized artifacts such as carved ivory to sell to collectors and dealers in the United States and abroad. The unauthorized collection, theft, and destruction of cultural resources on Federal and State land is prohibited by the Antiquities Act of 1906, the Archaeological Resources Protection Act of 1979, and the Alaska Historic Preservation Act. Persons caught violating these Acts face heavy fines and possible imprisonment.

The great expanses of public land in Alaska make it impossible to stop illegal relic collection. Through its internal policies, however, the BLM to some extent controls the vandalizing of cultural resources. For example, important sites are often posted with Antiquities signs, and the specific locations of archaeological sites are not listed in publications distributed to the general public. Nevertheless, looting and robbing of archaeological and historic resources on public land continues at an alarming rate. More damage was done to ancient sites in the United States last year than in the previous 600 years. Studies show that if the present trend continues, most of our archaeological sites will be destroyed within the next 25 years.

The BLM believes that the best way to preserve cultural resources is to educate the public. Our Nation's cultural heritage will be safeguarded only when the members of our society understand that the cultural resource values are far greater than their material worth. The BLM offers cultural resource awareness programs; each of us can make an effort to learn about artifacts and their value to our society.

If you visit or live in an area rich in cultural resources, you can contact local archaeological or historical groups and societies to find out how to help protect these values. As a well-informed visitor to archaeological and historic sites, you may teach your children and others about their importance. In some parts of the country, citizen groups have been formed to watch over artifact concentrations and keep them safe for future generations.

Responsible amateur archaeologists need not abandon their interest, but they should be responsive to the standards of the archaeology profession and coordinate their interests with those of professional archaeologists. Amateur archaeologists in Alaska have the opportunity to form a State archaeology society and to learn archaeological techniques at several campuses of the University of Alaska. By becoming familiar with scientific archaeology, the amateur archaeologist can extend his knowledge of the past beyond mere fascination with artifacts.



A microcore (left); a microblade that was struck from such a microcore (center); and a burin or an engraving and incising tool (right). All are artifacts from the Paleo-Arctic Tradition. (BLM staff photo)

Alaskan Cultural Groups-- Their Traces Are Our Cultural Resources

The following summary of the prehistory and history is presented to show the diversity of cultural groups in Alaska over time and the cultural heritage bequeathed us by these groups. This summary is taken from *The Eskimos and Aleuts*, by Don Dumond (1977).

PREHISTORIC GROUPS

Most archaeologists believe that people lived in Alaska and adjacent Canada before 20,000 B.C. By 8000 B.C. tundra-dwelling hunters roamed areas that were free from ice during the late Pleistocene glacial episodes. Archaeologists have named this the Paleo-Arctic Tradition.

The connection between these people and later Eskimo-Aleut and American Indians is not clear. Artifacts found at sites

where they lived consisted of stone microblades, small cores from which the microblades were pressed, bifaces (shaped by flaking stone from both faces), and burins (grooving or shaping implements). By 7000 B.C., these wandering hunters had reached the Alaska Peninsula, and by 6000 B.C., Umnak Island in the Aleutians.

Differences have been noted between people oriented to the coast and those living in Interior Alaska before 4000 B.C. In the Interior, typical artifacts (called Northern Archaic) were side-notched projectile points, perhaps for spears, similar to those dating from an earlier time in continental America.

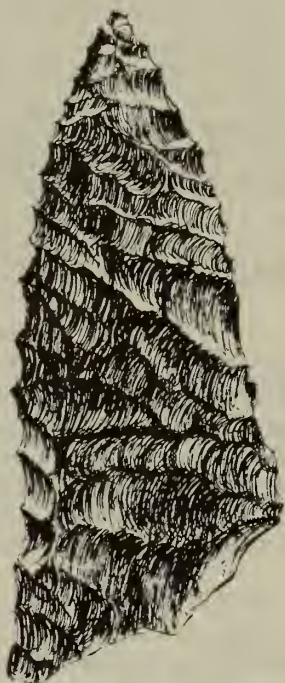


Side-notched projectile points. Archaeologists call these Northern Archaic Tradition artifacts.

Some believe that these forest dwellers were American Indians immigrating from the south. We do not know whether or not these people were ancestors of later Athapaskan Indians of the Interior because we have only scant archaeological evidence--small collections of implements from scattered sites. These people hunted caribou and fished. Their hunting techniques included use of the bow and arrow, stalking, trapping, and snaring.

At the same time, people who made lanceolate projectile points of chipped stone and used various bone implements were adapting to the Pacific Coast of the Alaska Peninsula and the eastern Aleutian Islands. By 2500 B.C. their descendants were living on Kodiak Island and using articles of polished slate. On the Aleutian Islands and tip of the Alaska Peninsula, they used chipped stone.

By 2000 B.C. hunters representing what archaeologists call the Arctic Small Tool Tradition were present in Alaska. The miniature implements of these people include small endblades and sideblades (that were inserted in arrow or spearheads made of hard organic material such as antler), burins, microblades, scrapers, large bifaces, and adz blades.



A harpoon blade from the Denbigh Flint Complex.



These flaked stone tools, called burins, are from the Denbigh Flint Complex.

The Arctic Small Tool Tradition was first recognized at Cape Denbigh and is known as Denbigh Flint Complex at the site of Onion Portage on the Kobuk River. The people of the Denbigh Flint Complex appear to have been the direct ancestors of today's Eskimos. The Denbigh Complex may be descended from the earlier Paleo-Arctic Tradition in America or Siberia, but this is one of the many questions archaeologists are trying to answer. Hunting musk oxen and caribou in the tundra, these early Eskimos spread rapidly from northern Alaska to Greenland and to the northern part of the Alaska Peninsula.

By 500 B.C., Eskimo people in the western Arctic were making pottery, burning sea mammal oil in lamps, and polishing slate. They had become more oriented to coastal living than were their immediate ancestors. Most of these people lived south of the Bering Strait, where they relied heavily upon a stable harvest of migrating salmon. Fewer lived in far northern Alaska, where they subsisted equally on foods from the land and the sea.

Early in the Christian era, people on St. Lawrence and other islands of the Bering Strait region began using polished slate instead of chipped stone. In addition, they worked bone and ivory into elaborately decorated implements for catching birds, fish, and sea mammals, including the great whales. This is



A carved ivory artifact from the Old Bering Sea Culture. No one knows what such objects were used for.

known as the Old Bering Sea aspect of the Thule Tradition. By A.D. 500, the Thule way of life had spread around the coast of northwest Alaska among people who eventually spoke the eastern Eskimo language. By A.D. 1000, the Thule culture had spread south along the Bering Sea and to Kodiak Island, where it was adopted by speakers of the western Eskimo language. By A.D. 1400 modern Eskimo culture, like that early Europeans found, had taken form.

In Southeast Alaska, groups of people were making stone tools as early as about 8000 B.C. Connections between these early groups and more recent Northwest Coast Indians, such as the Tlingit and Haida, cannot be stated with any certainty, however.

A BRIEF HISTORY--FROM ALASKA'S DISCOVERY IN 1741 TO TODAY

After Vitus Bering and Aleksei Chirikov discovered Alaska in 1741 and claimed it for Russia, Russian fur traders rushed to Alaska in search of sea otter pelts for the Chinese and European markets. The Russians followed the Aleutian Islands to the Alaska Peninsula, then traveled to Kodiak Island, Cook Inlet, and Prince William Sound. Rival trading companies established small posts on Unalaska Island and Kenai Peninsula, and in Prince William Sound.

The Russian eastward movement was spurred in part by the Spanish and English voyages to the North Pacific in the 1770's and 1780's. The voyages of James Cook in 1778 and George Vancouver in the early 1790's were of particular concern to the

Russians, who were not yet firmly established in Alaska. This task was left to the Russian-American Company, organized in 1799 with virtually absolute power in Alaska. In the same year, Alexander Baranov, the company's chief manager in Alaska, moved to establish the first Russian post in Southeast Alaska. The Russian community at Sitka became the main base of operations in Alaska and California.

In its 68-year existence, the Russian-American Company devoted most of its efforts to the sea otter trade. It did not extend its communities and influence much beyond the coasts. Some explorers ventured to the Copper, Susitna, Kuskokwim, Nushagak, and Yukon Rivers but little was done to use the knowledge they gained. With fewer than 1,000 Russians in Alaska in any one year, the Russian company's activities in Alaska were limited.

The decline of the sea otter population, the failure to develop other income sources, the increasing numbers of English traders and American whalers in North Pacific waters, the gold rush to the Stikine River in the early 1860's, and finally the defeat of Imperial Russia in the Crimean War---all contributed to the Russian Government's decision to sell Alaska. Secretary of State William H. Seward negotiated the purchase of Alaska for the United States, and on October 18, 1867, the American flag was raised at Sitka.

For 30 years after the purchase of Alaska, most of the non-Native population was in Southeast Alaska. In 1867, Alaska was under the jurisdiction of the Treasury Department, where it remained until 1884. Then it was organized into civil and judicial districts. The Army maintained order in the region from 1867 to 1877, and the Navy, from 1879 to 1884.

By the 1880's and 1890's, Americans had well-established mining and fishing industries in Southeast Alaska, and had begun mining near Cook Inlet and Prince William Sound and on the Seward Peninsula and along the Fortymile River. The military explorations of Frederick Schwatka, William R. Abercrombie, Henry T. Allen, John C. Cantwell, and George M.



Historic Jack Wade gold dredge, near Milepost 86 on the Taylor Highway. The dredge was operated in the Fortymile River area of Alaska from about 1900 until 1945. *(BLM staff photo)*

Stoney in the 1880's placed much of the Copper, Tanana, Yukon, Koyukuk, Noatak, and Kobuk Rivers on maps for the first time.

The Klondike Gold Rush of 1897-1898 is commonly regarded as a landmark in Alaskan history. Tens of thousands of people rushed to Alaska in the late 1890's and early 1900's and founded the towns of Skagway, Dyea, Valdez, Eagle, and others. They scattered throughout Alaska, and between 1900 and 1920 made important discoveries of gold and other minerals at Nome, Fairbanks, Kennicott, Ruby, Chandalar, Iditarod, Ophir, Cache Creek, and other places on the Koyukuk, Kobuk, Tanana, and Kuskokwim Rivers.

The Army followed the stampeders to establish posts on the Yukon River and Seward Peninsula as well as at Valdez and Haines. In addition, Army crews constructed a telegraph line from the Bering Sea to the United States-Canada Boundary, and on to Valdez where connections were made with submarine cables to Southeast Alaska and the lower United States.

In 1905, the Alaska Road Commission, an agency of the War Department, began work on the Valdez-Fairbanks Trail (now the Richardson Highway). Private enterprise constructed the White Pass & Yukon Railway from Skagway to Whitehorse, thereby linking the navigable Yukon River to a deep-water port. Morgan-Guggenheim capitalists constructed the Copper River and Northwestern Railway from Cordova to copper mines near McCarthy, and thus opened the Copper River Valley to development. And from 1915 to 1923 the Alaska Engineering Commission constructed the Alaska Railroad from Seward to Anchorage and Fairbanks, with branch lines to the important Matanuska and Nenana coal fields. Owned and operated by the Federal Government, the Alaska Railroad permitted the development of the Susitna and Tanana River Valleys.

Organized a Territory in 1912, Alaska witnessed the end of the gold rush era with World War I. Thereafter, big businesses dominated the economic development of Alaska. These included the Alaska Packers Association in the fisheries industry, the Morgan-Guggenheim interests and the United States Smelting, Refining and Mining Company in the mining industry, the Alaska Steamship Company in ocean transportation, and the Northern Commercial Company in inland transportation and the fur trade.

While the Alaska Road Commission made significant progress in road construction, the air age also arrived early in Alaska and numerous air fields were built. During the Depression of the 1930's, the Federal Government established an agricultural community in the Matanuska River Valley.

World War II and the Cold War opened a new era in Alaskan history. Large military bases were established at Fairbanks and Anchorage, many air fields were built, and the Alaska Highway was constructed from the lower United States through Canada

to Interior Alaska. In addition, the Alaska Road Commission and the Bureau of Public Roads constructed the Taylor, Seward, and Glenn Highways. The population of Alaska increased tremendously, and political organizations were formed to demand statehood for Alaska. On January 3, 1959, President Dwight Eisenhower signed into law the bill making Alaska the 49th State in the Union.

Since becoming a State, Alaska has had rapid economic growth, particularly in the fisheries, timber, and petroleum industries. The commercial fisheries in Bristol Bay, the timber operations in Southeast Alaska, and the oilfields on the Kenai Peninsula and the Arctic Coast have placed the State on relatively secure economic foundations. Entitled to receive more than 100 million acres of land under the Statehood Act, Alaska will be the largest land-holding State west of the Mississippi River when the lands are conveyed. In 1971, the Congress passed the Alaska Native Claims Settlement Act. This provided for the conveyance of \$925 million and 44 million acres of land to Native Corporations. Even after conveyance of lands to the State and Native Corporations is completed, most Alaska lands will remain in ownership of the Federal Government.

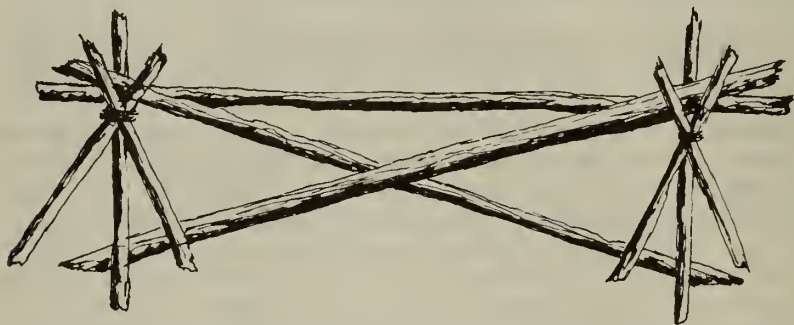
CULTURAL RESOURCES IN ALASKA

Over time, diverse prehistoric and historic groups occupied tundra, boreal forest, the sea coasts, and other parts of Alaska. To adapt to these often harsh environments, they had to be ingenious and resourceful. For example, to hunt seal, walrus, and whale, and to fish and trap small mammals, the coastal Eskimo needed to know about game habits, weather, and ice conditions. He had to develop weapons such as special toggling harpoon heads. Winter cold required warm permanent houses heated by seal oil lamps. Clothing had to be fashioned from animal fur and skins. A further aid to survival in winter was the dog sled. Early explorers, trappers, and miners withstood similar hardships and lived under conditions which we today find incredible.

All these past experiences by many different groups have left Alaska a rich legacy, represented today by many different cultural resources. Frequently, remains of ancient habitations are found. Prehistoric and historic Natives built round or rectangular houses consisting of sod, skin, bark, or earth on pole, bone, or log frameworks. The houses were either entirely above the ground or dug into the ground to various depths. Over time they deteriorated; however, we often see traces of them as depressions on the ground surface, some with the outlines of entrance ways. Willow flooring or collapsed posts and stone rings that were used to anchor skin tent sides also help us identify these ancient habitation sites.

Other fairly common archaeological features are caribou fences, caches, and hearths. Caribou fences, often several miles in length, were used to channel caribou to a point where they could be caught. Eskimos used lines of sod or rock piles (cairns) that looked like men to the caribou. Athapaskan Indians placed lashed poles for the same purpose.

Isolated cairns also indicate Eskimo landmarks or navigational aids. Caches were for storing meat, fish, and other perishable foods, and other materials. They were either built on platforms above the ground or dug into the ground.



Northern Athapaskans built fences like this to channel caribou to places where they could be killed easily.

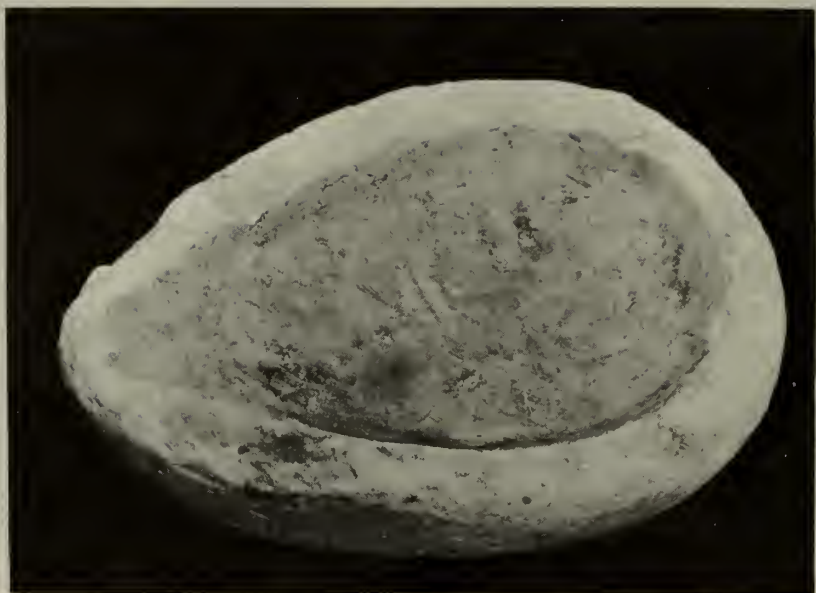


This ancient hearth, excavated by archaeologists, is in the Tangle Lakes area. It is associated with the Denali Complex and dates to about 7000 B.C. *(Photo courtesy F. H. West and R. G. Dixon)*

Wherever early man camped he built fires. The remains of his fireplaces or hearths are often seen as small rings of stones inside of which are charcoal, burnt bones, or other debris from cooking and other activities.

Objects made of ceramics, stone, ivory, antler, bone, and wood are often associated with archaeological sites. Ceramics (pottery) are more abundant in Alaska than is usually realized. They date from as early as about 1000 B.C. and are usually found as potsherds, or broken pieces, not whole vessels. Surfaces are usually plain or stamped with impressions.

Common and indestructible, stone is a good indicator of archaeological sites. Common flaked stone objects include drills, burins, projectile points, knives, side scrapers, end scrapers, graters, ulu blades, and adz blades. Artifacts made by grinding or abrading rather than by flaking include adzes, knives, lamps, grindstones, net sinkers, and bola stones.



A stone oil lamp from the Merrill archaeological site on the Kenai Peninsula. (*Photo courtesy Alaska Division of Parks*)

Because they readily deteriorate over time and are scarce, worked ivory, antler, bone, and wood artifacts are not recovered as often as are stone or ceramic objects. Unfortunately, these are the objects most prized by relic collectors.

Among historic structures in Alaska are trappers' and miners' old cabins. Varied and rare construction features make these buildings interesting and sometimes historically significant. Occasionally, these cabins represent the first intrusion by non-Natives into a particular area of Alaska, and for this reason alone, they are significant. Old equipment and implements in and around these cabins make them attractive to thoughtless vandals.

Other fairly common historic objects and places include early railroad cars (for example, the Council City and Solomon River

Railroad locomotives near Nome); sternwheelers (for example, the *Lavelle Young* in old McGrath); gold dredges (for example, Jack Wade); downed aircraft; historic trails (for example, Iditarod); and places where important events occurred (for example, the American flag-raising site in Sitka). Many of the structures need to be stabilized or rehabilitated immediately, before further deterioration makes it impossible to save them.

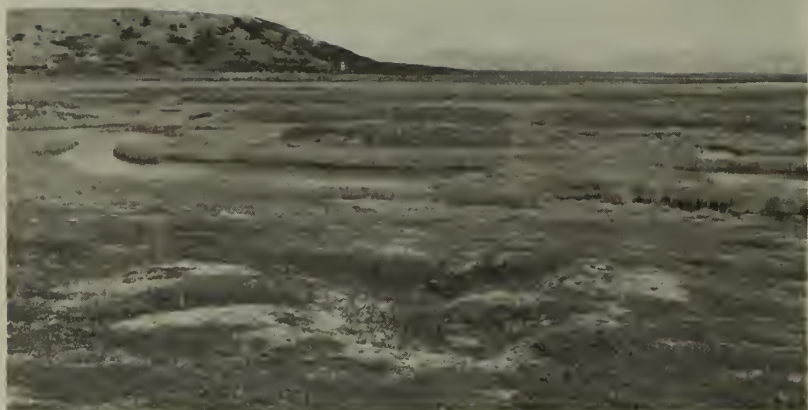
Your Role in Protecting Alaska's Cultural Resources

HOW TO RECOGNIZE ARCHAEOLOGICAL SITES

Archaeological sites are usually more difficult to locate than are above-ground historic resources. Some places were more favorable than others for prehistoric groups to occupy. Ridges, bluffs, and high, dry areas along game trails were favorable spots for people to camp and watch for game. They also established camps at the best fishing spots, such as the confluences of rivers and streams, outlets to lakes, and slack-water eddies.

Along the coast, the people used promontories or low hills and prominent points of land. Some coastal villages were on sandspits, where wind would blow mosquitoes away and where villagers had access to the sea and a quiet water lagoon behind the spit. Because few game animals lived in the muskeg, it did not attract prehistoric populations, and we are not likely to find archaeological sites in muskeg. Generally, habitation sites are located in the same places we would make a camp--for example, high, dry areas near good fishing streams.

Other sites and objects in Alaska that we must also be aware of are graves, historic trails, quarries, old railroad tracks, and



A shallow depression tells observers that a pit house once was here. An entrance tunnel led to the main part of the house, at the Nuk archaeological site, near Cape Nome, Alaska. (*BLM staff photo*)

downed historic aircraft. These may be found far from camp or habitation sites.

The guiding principle for locating archaeological sites is to look for something that is out of place or that seems unnatural, such as a rock where similar rocks are not usually found or wood where trees do not grow.

Perishable materials from past cultures often decomposed, turning the soil black. Darkened soil and stones that are black or orange and cracked from heat are signs of hearths. (The archaeologist Giddings learned to spot hearths by looking for discoloration on bits of soil showing between moss stems.)

Patches of vegetation that are darker, thicker, and of a different type than surrounding vegetation may indicate former house remains, especially if they are in a depression. These are where decomposed remains made the soil more fertile and vegetation greener and more intensive.



Stone flakes such as those shown in the circles were left by ancient people who were fashioning stone tools. *(BLM staff photo)*

A common indicator of archaeological sites in Alaska is the presence of stone flakes scattered on the ground. These are the flakes discarded when stone tools were being made. Such flakes are usually of basalt, flint, chert, chalcedony, or obsidian—materials from which flakes can be removed in a controlled way during the fashioning of a tool. These pieces of chipped stone often reveal to the archaeologist information on stone sources used long ago by toolmakers, areas of the site in which they made tools, and the methods they used. Where large concentrations of flakes are found, tools such as blades, burins, scrapers, and projectile points are likely to be present.

Animal bone fragments scattered about the surface may indicate other sites. These are probably not more than 2,000 years old since bones decompose over time. The people often cracked the long bones of mammals to get at the marrow, or made the bones into artifacts such as needles, harpoon heads, ulu handles, arrowheads, and fish hooks. Ancient human bones are extremely rare, since northern prehistoric peoples

often disposed of the dead by placing them on or above the ground or by cremating them.

Many archaeological sites are below the surface and must be found by excavation. This is usually done by an archaeologist digging exploratory test pits. Archaeological materials from such below-surface sites are often discovered during construction activities, where broken bones or flakes are sometimes seen in trench walls or backdirt. In such a case, work should be stopped until an archaeologist can examine the area.

WHAT TO DO WHEN YOU FIND CULTURAL RESOURCES

Never pick up, remove, alter, or in any way disturb cultural resources you find on public land. If the original context (or position) of the cultural resource is destroyed, it is impossible to do controlled research and recover information about the resource. Knowledge of an earlier culture may be lost.

You can do a valuable service for our cultural resource staff if you make notes on your find and leave the artifact in place. To be most helpful, your notes should include the following information:

1. Physical description of your find (the cultural property). Rough sketch maps and photographs (if appropriate) are appreciated.
2. Drawings of any significant features such as hearths, arrowhead caches, and log construction. (The drawing need not be a work of art; outline sketches serve the purpose.)
3. Description of the cultural resource's location, with latitude and longitude, if possible.

Submit all recorded data to the BLM Alaska State Office Archaeologist, who will enter the information on BLM inventory forms. The State Historic Preservation Officer (SHPO) also will be notified of the find so that it may be entered in the State's centralized data bank for cultural resources.

REVIEW OF CULTURAL RESOURCE LAWS AND REGULATIONS

Heightened interest in our Nation's cultural heritage resulted in major legislation designed to identify and protect cultural resources. This legislation provides authority and direction for BLM's cultural resources management program. A summary of each of these statutes is provided below. The most important acts and procedures, marked with an asterisk (*), are printed in entirety in the appendix.

* *Antiquities Act of 1906* (Public Law 59-209; 34 Stat. 225; 16 USC 432, 433) is the basic legislation for the preservation and protection of antiquities on all Federal land. It sets penalties for those who excavate or appropriate these values without Secretarial permit; provides for the establishment by Presidential proclamation of National Monuments from the public lands; and provides for permits for investigation of cultural and scientific resources to be issued to public, scientific, and educational institutions.

Uniform Rules and Regulations (43 CFR Part 3 and DM Part 310.7.6.) have been issued by the Secretaries of the Interior, Agriculture, and War (now Defense) to carry out the provisions of the Antiquities Act.

Historic Sites Act of 1935 (Public Law 74-292; 49 Stat. 666; 16 USC 461 et seq.) declares it a national policy to identify and preserve for public use historic sites, buildings, objects, and antiquities of national significance for the inspiration and benefit of the people.

* *Reservoir Salvage Act of 1960* (Public Law 86-523; 74 Stat. 220, 221, 16 USC 469), as amended by the *Archaeological and Historic Preservation Act of 1974* (Public Law 93-291; 88 Stat. 174; 16 USC 469), provides for the preservation of historical and archaeological data which might otherwise be lost as the result of Federally funded construction projects. Any reservoir of more than 5,000 acre feet or 40 surface acres must be reported to the Secretary of the Interior so that arrangements

can be made to survey the reservoir for archaeological and historical values and salvage those present. The amendment extends the act to include any Federal construction project or Federally licensed or assisted activity or program affecting cultural resources. The act further provides that up to one percent of funds from the program or construction project affecting cultural resources may be sent to recover, preserve, and protect the cultural resource data.

* *National Historic Preservation Act of October 15, 1966* (Public Law 89-665; 80 Stat. 915; 16 USC 470), as amended (Public Law 94-422; 90 Stat. 1313; and Public Law 94-458; 90 Stat. 1939), expands the national policy toward cultural resources to include those of State and local as well as national significance. It also establishes the National Register of Historic Places, the Advisory Council on Historic Preservation, State Historic Preservation Officers, and a matching grants-in-aid program for the National Trust. Section 106 directs all Federal agencies to take into account the effects of their actions on properties included in or eligible for inclusion in the National Register and affords opportunities for the Advisory Council on Historic Preservation to comment on the proposed actions and their effects. The act has also been amended to provide for the withholding from the public disclosure of information about the locations of sites or objects listed on the National Register if the disclosure would create a risk of destruction or harm to the sites or objects.

National Environmental Policy Act of 1969 (Public Law 91-190; 83 Stat. 852; 42 USC 4321) establishes national policy for protection and enhancement of the environment. Part of the function of the Federal Government in protecting the environment is to "preserve important historic, cultural, and natural aspects of our national heritage."

* *Executive Order 11593* ("Protection and Enhancement of the Cultural Environment," 36 F.R. 8921, May 13, 1971) directs all Federal agencies to inventory their cultural resources, to submit to the National Register of Historic Places all qualified sites meeting the criteria, and to protect all nominated

sites. It also directs the Federal agencies to use due caution with all cultural resources until the inventory, evaluation, and nomination processes are completed. Leadership of the Federal Government in cultural resource protection is made policy in this order.

* *Procedures of the Advisory Council on Historic Preservation* (36 CFR Part 800) establishes procedures for compliance with Section 106 of the National Historic Preservation Act of 1966 and Section 1(3) and 2(b) of the Executive Order 11593.

* *Archaeological Resources Protection Act of 1979* (Public Law 96-95) defines "archaeological resource" as any material remains of past human life or activities that are at least 100 years of age and of archaeological interest. The act allows Federal land-managing agencies to issue archaeological permits to qualified individuals or organizations, while setting forth qualifications for permit applicants and conditions under which a permit could be denied or revoked. The act prohibits commercial trade in archaeological resources obtained in violation of Federal, State, and local laws, and provides for civil or criminal penalties for violations of the act.

The Department of Transportation Act of 1966 (Public Law 89-670; 80 Stat. 931; 49 USC 1653) declares it to be national policy that a "special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites." It requires planning to minimize harm to historic sites where there are no feasible and prudent alternatives to transportation plans.

Recreation and Public Purposes Act of June 14, 1926 (Public Law 69-386; 44 Stat. 741; 43 USC 869), as amended, authorizes the lease or sale of lands for recreational and public purposes, including historic sites under certain conditions.

Council on Environmental Quality Guidelines (40 CFR, Part 1500) provides directions for compliance with the National

Environmental Policy Act and directs Federal agencies to comply with consultation and compliance requirements of the National Historic Preservation Act of 1966. Combining these requirements with those of the National Environmental Policy Act presents a single document "which meets all applicable requirements."

Marine Protection, Research, and Sanctuaries Act of 1974 (Public Law 92-532; 86 Stat. 1052) provides for the establishment of Marine Sanctuaries by the Secretary of Commerce, "after consultation with the Secretaries of State, Defense, the Interior, and Transportation, the Administrator (of the Environmental Protection Agency), and the heads of other interested Federal agencies, and with the approval of the President, . . . those areas of the ocean waters, as far seaward as the outer edge of the Continental Shelf, . . . of other coastal waters . . . which he determines necessary for the purpose of preserving or restoring such areas for their conservation, recreational, ecological or aesthetic values." The historic Civil War shipwreck *Monitor* was placed in such a sanctuary.

Outer Continental Shelf Act of 1953 (Public Law 83-212; 67 Stat. 462; 43 USC 1331) provides that, "The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the Outer Continental Shelf . . . to the same extent as if the Outer Continental Shelf were an area of exclusive Federal jurisdiction located within a state." It allows for nonconflicting State laws to be applied on the OCS.

Mineral Leasing Act of 1920 (Public Law 66-146; 41 Stat. 437), as amended and supplemented (30 USC 181 et seq.) provides for the disposition, through permitting and leasing, of minerals on public lands (including coal, oil, oil shale, gas, phosphate, sodium, and potassium) for purposes of mineral exploration and extraction. The Secretary of the Interior is authorized to condition mineral permits and leases to ensure the protection of environmental and other land use values, including cultural resources. In addition, the permittee or lessee may be required to bear the expense of compliance with stipulations.

Geothermal Steam Act of 1970 (Public Law 91-581; 84 Stat. 1566; 30 USC 1001-1025) authorizes the Secretary of the Interior to issue leases for development and utilization of geothermal resources and by-products in lands administered by him, in National Forests or other lands administered by the Department of Agriculture through the Forest Service, and in conveyed lands to which the United States has reserved the right to geothermal steam and associated resources. Regulations implementing the act include the protection of environmental qualities and surface use and resources. Lessees are required to comply with lease terms and stipulations related to discovered, known, or suspected archaeological, paleontological, or historic sites.

Coastal Zone Management Act of 1972 (Public Law 92-582; 86 Stat. 1280), as amended in 1976 (Public Law 94-370; 90 Stat. 1013), establishes the national policy for management, beneficial use, protection, and development of the land and water resources of the Nation's coastal zones. It ensures that Federal programs are consistent with State plans.

National Park System Mining Activity Regulations Act of 1976 (Public Law 94-429; 90 Stat. 1342; 16 USC 1902 et seq.) provides that whenever the Secretary of the Interior finds or is notified by an appropriate scientific, historical, or archaeological authority that a property found to be nationally significant in illustrating the history of the United States and designated as a natural or historical landmark may be irreparably lost or destroyed by surface mining activities, he shall notify the person conducting the activity and submit a report to the Advisory Council on Historic Preservation, with a request for alternative measures to mitigate or abate the activity. The act also authorizes the Council to report to Congress on actual or potential effects of surface mining activities on those properties and include recommendations for legislation to protect the properties.

Federal Land Policy and Management Act of 1976 (Public Law 94-579; 90 Stat. 2743; 43 USC 1701) directs the Bureau of Land Management to manage public lands on the

basis of multiple use, and in a manner that will "... protect the quality of scientific . . . , historical . . . , environmental . . . , resources, and archeological values," and that, where appropriate, will preserve and protect certain public lands in their natural condition. The act authorizes the disposition, exchange, and acquisition of land; requires the inventory of public land; provides for long-range, comprehensive resource planning; authorizes the Secretary of the Interior to make rules and regulations pertaining to the public lands; and provides for the enforcement of public land laws and regulations.

SUGGESTED READING

The following publications present general information on prehistory and history of Alaska and on cultural resource management. Those who wish more detailed information on these topics will find suggestions in the bibliographies of these publications.

Andrews, C. L.

1947

The Story of Alaska. Caxton Printers, Ltd. Caldwell, Idaho. 332 pp.

Bandi, Hans-Georg

1969

Eskimo Prehistory. Translated by Ann E. Keep. University of Alaska Press, College, Alaska. 226 pp.

Dumond, Don E.

1977

The Eskimos and Aleuts. Thames and Hudson, Ltd., London. 180 pp; 119 illustrations.

Federova, Svetlana G.

- 1973 *The Russian Population in Alaska and California; Late 18th Century - 1867.* Trans. and ed. by Richard A. Pierce and Alton S. Donnelly. Limestone Press, Kingston, Ontario. 376 pp.

Frederick, Robert A. (editor)

- 1974 *Writing Alaska's History: A Guide to Research.* Alaska Historical Commission, Office of the Governor. Anchorage, Alaska. 162 pp.

Giddings, J. Louis

- 1973 *Ancient Men of the Arctic.* Alfred A. Knopf, New York, N.Y. 391 pp.

Gruening, Ernest

- 1954 *The State of Alaska.* Random House, New York. 606 pp.

Hunt, William R.

- 1974 *North of 53°: Wild Days of the Alaska-Yukon Mining Frontier, 1870-1914.* Macmillan Publishing Co., New York. 328 pp.

McGimsey, Charles R. III

- 1972 *Public Archeology.* Seminar Press, New York and London. 265 pp.

National Park Service

- 1961 *Alaska History 1741-1910.* National Survey of Historic Sites and Buildings,

United States Department of the
Interior, National Park Service.
222 pp.

Oswalt, Wendell H.

1967

Alaskan Eskimos. Chandler Publishing
Company, San Francisco, Calif. Dist.
by Science Research Associates,
Chicago, Ill. 297 pp.

Schiffer, Michael B. and
George J. Gumerman, editors

1977

*Conservation Archaeology: A Guide
for Cultural Resource Management
Studies.* Academic Press, New York,
N.Y. 495 pp.

VanStone, James W.

1974

*Athapaskan Adaptions: Hunters and
Fishermen of the Subarctic Forests.*
Aldine Publishing Company, Chicago.
Ill. 145 pp.

Wiley, Gordon R.

1966

*An Introduction to American
Archaeology, Vol. I. North and
Middle America.* Prentice-Hall, Inc.
Englewood Cliffs, New Jersey.
530 pp.

GLOSSARY

Advisory Council on Historic Preservation: A council, created by the Historic Preservation Act of 1966, composed of the Secretaries of various Federal departments and representatives of Federal agencies and 10 citizens appointed by the President. The council reviews Federal undertakings affecting cultural properties and advises Congress and the President on historic preservation.

Archaeology: The scientific study of past peoples and their cultures by means of excavating their artifacts and other material remains.

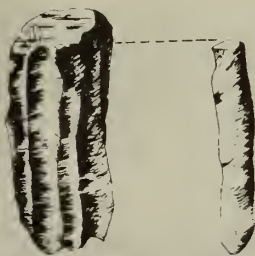
Artifact: Any object made, modified, or used by man, usually movable.

Biface: A stone artifact that has flakes removed from both sides or surfaces.

Blade: A long, narrow stone flake with parallel sides, removed from a specially prepared core. A *microblade* is a small blade.

Burin: A flaked stone tool with chisel-shaped edge produced by a characteristic blow. Burins were probably used to groove or engrave antler.

Core: A stone from which flakes have been removed to make implements.



The object on the left is a stone core from which ancient people struck microblades (right) for use as tools.

Cultural Resource: See page 1.

Flake: A thin, flat piece of stone removed from a core by applied force.

Historic: That period of time during which written records or recorded history have been kept. In Alaska, the historic period begins with the Russian discovery of the Bering Strait by Vitus Bering in 1741.

National Register of Historic Places: The official list, established by the Historic Preservation Act of 1966, of the Nation's cultural resources worthy of preservation. The register lists archaeological, historic, and architectural properties nominated for their local, State, or national significance by State and/or Federal agencies and approved by the National Register staff. The register is maintained by the Department of the Interior, Heritage Conservation and Recreation Service.

Prehistoric: That period of time before written history. In Alaska, "prehistoric" refers to the period before Russian discovery and exploration of Alaska.

State Historic Preservation Officer (SHPO): The official within each State who acts as the liaison between the State and the Advisory Council on Historic Preservation. Under 36 CFR 800, "Procedures for the Protection of Historic and Cultural Properties," the SHPO must be consulted by Federal agencies before they engage in a project which could affect cultural resources.

Site: An area or location of past human activities or events. A cultural resource site may range in size from a few flakes to an entire village.

APPENDIX

The Antiquities Act of 1906

[Public—No. 209.]

An Act For the preservation of American antiquities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall upon conviction, be fined in a sum of not more than five hundred dollars or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

SEC. 2. That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected: **Provided**, That when such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States.

SEC. 3. That permits for the examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and War to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe: **Provided**, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums.

SEC. 4. That the Secretaries of the Departments aforesaid shall make and publish from time to time uniform rules and regulations for the purposes of carrying out the provisions of this Act.

Approved, June 8, 1906 (34 Stat. L. 225).

The National Historic Preservation Act of October 15, 1966

Public Law 89-665, October 15, 1966, as amended by P.L. 94-422, to establish the National Historic Preservation Fund and for other purposes, September 28, 1976, and P.L. 94-458, for improvement in the administration of the National Park System, October 7, 1976.

AN ACT

To establish a program for the preservation of additional historic properties through the Nation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

The Congress finds and declares--

(a) that the spirit and direction of the Nation are founded upon and reflected in its historic past;

(b) that the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(c) that, in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation; and

(d) that, although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

TITLE I

Sec. 101. (a) The Secretary of the Interior is authorized--

(1) to expand and maintain a national register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture, hereinafter referred to as the National Register, and to grant funds to States for the purpose of preparing comprehensive statewide historic surveys and plans in accordance with criteria established by the Secretary for the preservation, acquisition, and development of such properties;

(2) to establish a program of matching grants-in-aid to States for projects having as their purpose the preservation for public benefit of properties that are significant in American history, architecture, archeology, and culture; and

(3) to establish a program of matching grants-in-aid to the National Trust for Historic Preservation in the United States, chartered by act of Congress approved October 26, 1949 (63 Stat. 927),

as amended, for the purpose of carrying out the responsibilities of the National Trust.

(4) to withhold from disclosure to the public, information relating to the location of sites or objects listed on the National Register whenever he determines that the disclosure of specific information would create a risk of destruction or harm to such sites or objects.

(b) As used in this Act--

(1) The term "State" includes, in addition to the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) The term "project" means programs of State and local governments and other public bodies and private organizations and individuals for the acquisition of title or interests in, and for the development of, any district, site, building, structure, or object that is significant in American history, architecture, archeology, and culture, or property used in connection therewith, and for its development in order to assure the preservation for public benefit of any such historical properties.

(3) The term "historic preservation" includes the protection, rehabilitation, restoration, and reconstruction of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, or culture.

(4) The term "Secretary" means the Secretary of the Interior.

Sec. 102. (a) No grant may be made under this Act--

(1) unless application therefor is submitted to the Secretary in accordance with regulations and procedures prescribed by him;

(2) unless the application is in accordance with the comprehensive statewide historic preservation plan which has been approved by the Secretary after considering its relationship to the comprehensive statewide outdoor recreation plan prepared pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897);

(3) for more than 50 per centum of the total cost involved, as determined by the Secretary and his determination shall be final;

(4) unless the grantee has agreed to make such reports, in such form and containing such information as the Secretary may from time to time require;

(5) unless the grantee has agreed to assume, after completion of the project, the total costs of the continued maintenance, repair, and administration of the property in a manner satisfactory to the Secretary; and

(6) until the grantee has complied with such further terms and conditions as the Secretary may deem necessary or advisable.

(b) The Secretary may in his discretion waive the requirements of subsection (a), paragraphs (2) and (5) of this section for any grant under this Act to the National Trust for Historic Preservation in the United States, in which case a grant to the National Trust may include funds for the maintenance, repair, and administration of the property in a manner satisfactory to the Secretary.

(c) The Secretary may in his discretion waive the requirements of paragraph (3) of subsection (a) of this section for the purposes of making grants for the preparation of statewide historic preservation plans and surveys and project plans. Any grant made pursuant to this subsection may not exceed 70 per centum of the cost of a project, and

the total of such grants made pursuant to this subsection in any one fiscal year may not exceed one-half of the funds appropriated for that fiscal year pursuant to Section 108 of this Act.

(d) No State shall be permitted to utilize the value of real property obtained before the date of approval of this Act in meeting the remaining cost of a project for which a grant is made under this Act.

Sec. 103. (a) The amounts appropriated and made available for grants to the States for comprehensive statewide historic surveys and plans under this Act shall be apportioned among the States by the Secretary on the basis of needs as determined by him;

(b) The amounts appropriated and made available for grants to the States for projects under this Act for each fiscal year shall be apportioned among the States by the Secretary in accordance with needs as disclosed in approved statewide historic preservation plans.

The Secretary shall notify each State of its apportionment, and the amounts thereof shall be available thereafter for payment to such State for projects in accordance with the provisions of this Act. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which such notification is given, and for two fiscal years thereafter, shall be reapportioned by the Secretary in accordance with this subsection.

Sec. 104. (a) No grant may be made by the Secretary for or on account of any survey or project under this Act with respect to which financial assistance has been given or promised under any other Federal program or activity, and no financial assistance may be given under any other

Federal program or activity for or on account of any survey or project with respect to which assistance has been given or promised under this Act.

(b) In order to assure consistency in policies and actions under this Act with other related Federal programs and activities, and to assure coordination of the planning, acquisition, and development assistance to States under this Act with other related Federal programs and activities, the President may issue such regulations with respect thereto as he deems desirable, and such assistance may be provided only in accordance with such regulations.

Sec. 105. The beneficiary of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the disposition by the beneficiary of the proceeds of such assistance, the total cost of the project or undertaking supplied by other sources, and such records as will facilitate an effective audit.

Sec. 106. The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or Federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

Sec. 107. Nothing in this Act shall be construed

to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds.

Sec. 108. To carry out the provisions of this Act, there is hereby established the Historic Preservation Fund (hereafter referred to as the 'fund') in the Treasury of the United States.

There shall be covered in to such fund \$24,400,000 for fiscal year 1977, \$100,000,000 for fiscal year 1978, \$100,000,000 for fiscal year 1979, \$150,000,000 for fiscal year 1980, and \$150,000,000 for fiscal year 1981, from revenues due and payable to the United States under the Outer Continental Shelf Lands Act (67 Stat. 462, 469), as amended (43 U.S.C. 338), and/or under the Act of June 4, 1920 (41 Stat. 813), as amended (30 U.S.C. 191), notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Such moneys shall be used only to carry out the purposes of this Act and shall be available for expenditure only when appropriated by the Congress. Any moneys not appropriated shall remain available in the fund until appropriated for said purposes: Provided, that appropriations made pursuant to this paragraph may be made without fiscal year limitation.

TITLE II

Sec. 201. (a) There is established as an independent agency of the United States Government an Advisory Council on Historic Preservation (hereinafter referred to as the 'Council') which shall be composed of twenty-nine members as follows:

- (1) The Secretary of the Interior;
- (2) The Secretary of Housing and Urban Development;

- (3) The Secretary of Commerce;
- (4) The Administrator of the General Services Administration;
- (5) The Secretary of the Treasury;
- (6) The Attorney General;
- (7) The Secretary of Agriculture;
- (8) The Secretary of Transportation;
- (9) The Secretary of State;
- (10) The Secretary of Defense;
- (11) The Secretary of Health, Education, and Welfare;
- (12) The Chairman of the Council on Environmental Quality;
- (13) The Chairman of the Federal Council on the Arts and Humanities;
- (14) The Architect of the Capitol;
- (15) The Secretary of the Smithsonian Institution;
- (16) The Chairman of the National Trust for Historic Preservation;
- (17) The President of the National Conference; and
- (18) Twelve appointed by the President from outside the Federal Government. In making these appointments, the President shall give due consideration to the selection of officers of State and local governments and individuals who are significantly interested and experienced in the matters to be considered by the Council.

(b) Each member of the Council specified in paragraphs (1) through (17) of subsection (a) may designate another officer of his department, agency, or organization to serve on the Council in his stead.

(c) Each member of the Council appointed under paragraph (18) of subsection (a) shall serve for a term of five years from the expiration of his predecessor's term; except that the members first

appointed under that paragraph shall serve for terms of from one to five years, as designated by the President at the time of appointment, in such manner as to insure that the terms of not less than one nor more than two of them will expire in any one year.

(d) A vacancy in the Council shall not affect its powers, but shall be filled in the same manner as the original appointment (and for the balance of the unexpired term).

(e) The Chairman and the Vice Chairman of the Council shall be designated by the President. During the absence or disability of the Chairman or when the office is vacant, the Vice Chairman shall act in the place of the Chairman.

(f) Fifteen members of the Council shall constitute a quorum.

Sec. 205. (a) There shall be an Executive Director of the Council who shall be appointed in the competitive service by the Chairman, report directly to the Council, and perform such functions and duties as the Council may prescribe.

(b) The Council shall have a General Counsel, who shall be appointed by the Executive Director. The General Counsel shall report directly to the Executive Director and serve as the Council's legal advisor. The Executive Director shall appoint such other attorneys as may be necessary to assist the General Counsel, represent the Council in courts of law whenever appropriate, assist the Department of Justice in handling litigation concerning the Council in courts of law, and perform such other legal duties and functions as the Executive Director and the Council may direct.

(c) The Executive Director of the Council may appoint and fix the compensation of such officers and employees in the competitive service as are necessary to perform the functions of the Council

at rates not to exceed that now or hereafter prescribed for the highest rate for grade 15 of the General Schedule under section 5332 of title 5, United States Code: Provided, however, that the Executive Director, with the concurrence of the Chairman, may appoint and fix the compensation of not to exceed five employees in the competitive service at rates not to exceed that now or hereafter prescribed for the highest rate of grade 17 of the General Schedule under section 5332 of title 5, United States Code.

(d) The Executive Director shall have power to appoint and fix the compensation of such additional personnel as may be necessary to carry out its duties, without regard to the provisions of the civil service laws and the classification Act of 1949.

(e) The Executive Director of the Council is authorized to procure expert and consultant services in accordance with the provisions of section 3109 of title 5, United States Code.

(f) Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel, and procurement) shall be provided the Council by the Department of the Interior, for which payments shall be made in advance, or by reimbursement, from funds of the Council in such amounts as may be agreed upon by the Chairman of the Council and the Secretary of the Interior: Provided, that the regulations of the Department of the Interior for the collection of indebtedness of personnel resulting from erroneous payments (5 U.S.C. 46e) shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of said Secretary for the administrative controls of funds (31 U.S.C. 665(g)) shall apply to ap-

appropriations of the Council: And provided further, that the Council shall not be required to prescribe such regulations.

(g) The members of the Council specified in paragraphs (1) through (16) of section 201(a) shall provide the Council, with or without reimbursement as may be agreed upon by the Chairman and the members with such funds, personnel, facilities, and services under their jurisdiction and control as may be needed by the Council to carry out its duties, to the extent that such funds, personnel, facilities, and services are requested by the Council and are otherwise available for that purpose. To the extent of available appropriations, the Council may obtain, by purchase, rental, donation, or otherwise, such additional property, facilities, and services as may be needed to carry out its duties.

Sec. 206. (a) The participation of the United States as a member in the International Centre for the Study of the Preservation and Restoration of Cultural Property is hereby authorized.

(b) The Council shall recommend to the Secretary of State, after consultation with the Smithsonian Institution and other public and private organizations concerned with the technical problems of preservation, the members of the official delegation which will participate in the activities of the Centre on behalf of the United States. The Secretary of State shall appoint the members of the official delegation from the persons recommended to him by the Council.

(c) For the purposes of this section there are authorized to be appropriated not more than \$175,000 per year for fiscal years 1977, 1978, and 1979: Provided, that no appropriation is authorized and no payment shall be made to the Centre in

excess of 25 per centum of the total annual assessment of such organization.

Sec. 207. So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, programmed, or available or to be made available by the Department of the Interior in connection with the functions of the Council, as the Director of the Office of Management and Budget shall determine, shall be transferred from the Department to the Council within 60 days of the effective date of this Act.

Sec. 208. Any employee in the competitive service of the United States transferred to the Council under the provisions of this section shall retain all the rights, benefits, and privileges pertaining thereto held prior to such transfer.

Sec. 209. The Council is exempt from the provisions of the Federal Advisory Committee Act (86 Stat. 770), and the provisions of the Administrative Procedure Act (80 Stat. 381) shall govern the operations of the Council.

Sec. 210. Whenever the Council transmits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit copies thereof to the House Committee on Interior and Insular Affairs. No officer or agency of the United States shall have any authority to require the Council to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Council voluntarily seeks to obtain the comments or review of any officer or agency of

the United States, the Council shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

Sec. 211. The Council is authorized to promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 of this Act.

Sec. 212. (a) The Council shall submit its budget annually as a related agency of the Department of the Interior. To carry out the provisions of this title, there are authorized to be appropriated not more than \$1,500,000 in fiscal year 1977, \$1,750,000 in fiscal year 1978, and \$2,000,000 in fiscal year 1979.

(b) Whenever the Council submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Interior and Insular Affairs and the Senate Committee on Interior and Insular Affairs.

Executive Order 11593, “Protection and Enhancement of the Cultural Environment,” May 13, 1971

By virtue of the authority vested in me as President of the United States and in furtherance of the purposes and policies of the National Environmental Policy Act of 1969 (83 Stat. 852, 42 U.S.C. 4321 et seq.), the National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470 et seq.), the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461 et seq.), and the Antiquities Act of 1906 (34 Stat. 225, 16 U.S.C. 431 et seq.), it is ordered as follows:

SECTION 1. *Policy.* The Federal Government shall provide leadership in preserving, restoring and maintaining the historic and cultural environment of the Nation. Agencies of the executive branch of the Government (hereinafter referred to as “Federal agencies”) shall (1) administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations, (2) initiate measures necessary to direct their policies, plans and programs in such a way that federally owned sites, structures, and objects of historical, architectural or archaeological significance are preserved, restored and maintained for the inspiration and benefit of the people, and (3), in consultation with the Advisory Council on Historic Preservation (16 U.S.C. 470i), institute procedures to assure that Federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures and objects of historical, architectural or archaeological significance.

SEC. 2. *Responsibilities of Federal agencies.* Consonant with the provisions of the acts cited in the first paragraph of this order, the heads of Federal agencies shall:

(a) no later than July 1, 1973, with the advice of the Secretary of the Interior, and in cooperation with the liaison officer for historic preservation for the State or territory involved, locate, inventory, and nominate to the Secretary of the Interior all sites, buildings, districts, and objects under their jurisdiction or control that appear to qualify for listing on the National Register of Historic Places.

(b) exercise caution during the interim period until inventories and evaluations required by subsection (a) are completed to assure that any federally owned property that might qualify for nomination is not inadvertently transferred, sold, demolished or substantially altered. The agency head shall refer any questionable actions to the Secretary of the Interior for an opinion respecting the property's eligibility for inclusion on the National Register of Historic Places. The Secretary shall consult with the liaison officer for historic preservation for the State or territory involved in arriving at his opinion. Where, after a reasonable period in which to review and evaluate the property, the Secretary determines that the property is likely to meet the criteria prescribed for listing on the National Register of Historic Places, the Federal agency head shall reconsider the proposal in light of national environmental and preservation policy. Where, after such reconsideration, the Federal agency head proposes to transfer, sell, demolish or substantially alter the property he shall not act with respect to the property until the Advisory Council on Historic Preservation shall have been provided an opportunity to comment on the proposal.

(c) initiate measures to assure that where as a result of Federal action or assistance a property listed on the National Register of Historic Places is to be substantially altered or demolished, timely steps be taken to make or have made records, including measured drawings, photographs and maps, of the property, and that copy of such records then be deposited in the Library of Congress as part of the Historic American Buildings Survey or Historic American Engineering Record for future use and reference. Agencies may call on the Department of the Interior for advice and technical assistance in the completion of the above records.

(d) initiate measures and procedures to provide for the maintenance, through preservation, rehabilitation, or restoration, of federally owned and registered sites at professional standards prescribed by the Secretary of the Interior.

(e) submit procedures required pursuant to subsection (d) to the Secretary of the Interior and to the Advisory Council on Historic Preservation no later than January 1, 1972, and annually thereafter, for review and comment.

(f) cooperate with purchasers and transferees of a property listed on the National Register of Historic Places in the development of viable plans to use such property in a manner compatible with preservation objectives and which does not result in an unreasonable economic burden to public or private interests.

SEC. 3. *Responsibilities of the Secretary of the Interior.* The Secretary of the Interior shall:

(a) encourage State and local historic preservation officials to evaluate and survey federally owned historic properties and, where appropriate, to nominate such properties for listing on the National Register of Historic Places.

(b) develop criteria and procedures to be applied by Federal agencies in the reviews and nominations required by section 2(a). Such criteria and procedures shall be developed in consultation with the affected agencies.

(c) expedite action upon nominations to the National Register of Historic Places concerning federally owned properties proposed for sale, transfer, demolition or substantial alteration.

(d) encourage State and Territorial liaison officers for historic preservation to furnish information upon request to Federal agencies regarding their properties which have been evaluated with respect to historic, architectural or archaeological significance and which as a result of such evaluations have not been found suitable for listing on the National Register of Historic Places.

(e) develop and make available to Federal agencies and State and local governments information concerning professional methods and techniques for preserving, improving, restoring and maintaining historic properties.

(f) advise Federal agencies in the evaluation, identification, preservation, improvement, restoration and maintenance of historic properties.

(g) review and evaluate the plans of transferees of surplus Federal properties transferred for historic monument purposes to assure that the historic character of such properties is preserved in rehabilitation, restoration, improvement, maintenance and repair of such properties.

(h) review and comment upon Federal agency procedures submitted pursuant to section 2(e) of this order.

RICHARD NIXON

THE WHITE HOUSE,
May 13, 1971.

Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974



Public Law 93-291
93rd Congress, S. 514
May 24, 1974

An Act

86 STAT. 174

To amend the Act of June 27, 1960 (74 Stat. 220), relating to the preservation of historical and archeological data.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to provide for the preservation of historical and archeological data (including relics and specimens) which might otherwise be lost as the result of the construction of a dam", approved June 27, 1960 (74 Stat. 220; 16 U.S.C. 469), is amended as follows:

historical and
archeological
data, preserva-
tion.
Extension to
Federal or fed-
erally assisted
projects.

(1) In section 1, after "result of" insert "(1)" and delete "agency.." and insert "agency or (2) any alteration of the terrain caused as a result of any Federal construction project or federally licensed activity or program."

(2) In section 2, change "Sec. 2. (a)", to "Sec. 2."; after "Secretary of the Interior" insert "(hereafter referred to as the Secretary)", and delete all of subsection (b).

16 USC 469a.

(3) Add the following new sections:

"Sec. 3. (a) Whenever any Federal agency finds, or is notified, in writing, by an appropriate historical or archeological authority, that its activities in connection with any Federal construction project or federally licensed project, activity, or program may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, such agency shall notify the Secretary, in writing,

16 USC 469a-1.
Notification.

and shall provide the Secretary with appropriate information concerning the project, program, or activity. Such agency may request the Secretary to undertake the recovery, protection, and preservation of such data (including preliminary survey, or other investigation as needed, and analysis and publication of the reports resulting from such investigation), or it may, with funds appropriated for such project, program, or activity, undertake such activities. Copies of reports of any investigations made pursuant to this section shall be submitted to the Secretary, who shall make them available to the public for inspection and review.

"(b) Whenever any Federal agency provides financial assistance by loan, grant, or otherwise to any private person, association, or public entity, the Secretary, if he determines that significant scientific, prehistorical, historical, or archeological data might be irrevocably lost or destroyed, may with funds appropriated expressly for this purpose conduct, with the consent of all persons, associations, or public entities having a legal interest in the property involved, a survey of the affected site and undertake the recovery, protection, and preservation of such data (including analysis and publication). The Secretary shall, unless otherwise mutually agreed to in writing, compensate any person, association, or public entity damaged as a result of delays in construction or as a result of the temporary loss of the use of private or any nonfederally owned lands.

"SEC. 4. (a) The Secretary, upon notification, in writing, by any Federal or State agency or appropriate historical or archeological authority that scientific, prehistorical, historical, or archeological data is being or may be irrevocably lost or destroyed by any Federal or federally assisted or licensed project, activity, or program, shall, if he determines that such data is significant and is being or may be irrevocably lost or destroyed and after reasonable notice to the agency responsible for funding or licensing such project, activity, or program, conduct or cause to be conducted a survey and other investigation of the areas which are or may be affected and recover and preserve such data (including analysis and publication) which, in his opinion, are not being, but should be, recovered and preserved in the public interest.

"(b) No survey or recovery work shall be required pursuant to this section which, in the determination of the head of the responsible agency, would impede Federal or federally assisted or licensed projects or activities undertaken in connection with any emergency, including projects or activities undertaken in anticipation of, or as a result of, a natural disaster.

"(c) The Secretary shall initiate the survey or recovery effort within sixty days after notification to him pursuant to subsection (a) of this section or within such time as may be agreed upon with the head of the agency responsible for funding or licensing the project, activity, or program in all other cases.

"(d) The Secretary shall, unless otherwise mutually agreed to in writing, compensate any person, association, or public entity damaged as a result of delays in construction or as a result of the temporary loss of the use of private or nonfederally owned land."

(4) In section 2, change "SEC. 2. (c)" to "SEC. 5. (a)" and change "instigating agency" to "agency responsible for funding or licensing the project" and delete "agency." and insert "agency and the survey and recovery programs shall terminate at a time mutually agreed upon by the Secretary and the head of such agency unless extended by mutual agreement."

(5) Delete subsection 2(d).

(6) In section 2, change "SEC. 2. (e)" to "SEC. 5. (b)".

Data recovery,
agency requests.

Reports, copies;
availability.

Survey.

Construction de-
lays, compensa-
tion.

16 USC 469a-2.

Emergency
projects.

Initiation.

Construction
delays, com-
pensation.

74 Stat. 220.
16 USC 469a.
16 USC 469a-3.

Coordination.
Annual report
to congress-
sional com-
mittees.

(7) In section 5, add the following new subsection:
“(c) The Secretary shall coordinate all Federal survey and recovery activities authorized under this Act and shall submit an annual report at the end of each fiscal year to the Interior and Insular Affairs Committees of the United States Congress indicating the scope and effectiveness of the program, the specific projects surveyed and the results produced, and the costs incurred by the Federal Government as a result thereof.”

16 USC 469b.

(8) Redesignate “SEC. 3.” as “SEC. 6.” and change paragraphs (2) and (3) to read as follows:

Experts and
consultants.
80 Stat. 416.
Funds,
acceptance.

“(2) obtain the services of experts and consultants or organizations thereof in accordance with section 3109 of title 5, United States Code; and

“(3) accept and utilize funds made available for salvage archeological purposes by any private person or corporation or transferred to him by any Federal agency.”

Funds,
transfer.
16 USC 469c.

(9) Delete all of section 4 and insert the following:

“SEC. 7. (a) To carry out the purposes of this Act, any Federal agency responsible for a construction project may assist the Secretary and/or it may transfer to him such funds as may be agreed upon, but not more than 1 per centum of the total amount authorized to be appropriated for such project, except that the 1 per centum limitation of this section shall not apply in the event that the project involves \$50,000 or less: *Provided*, That the costs of such survey, recovery, analysis, and publication shall be considered nonreimbursable project costs.

Appropriation.

“(b) For the purposes of subsection 3(b), there are authorized to be appropriated such sums as may be necessary, but not more than \$500,000 in fiscal year 1974; \$1,000,000 in fiscal year 1975; \$1,500,000 in fiscal year 1976; \$1,500,000 in fiscal year 1977; and \$1,500,000 in fiscal year 1978.

“(c) For the purposes of subsection 4(a), there are authorized to be appropriated not more than \$2,000,000 in fiscal year 1974; \$2,000,000 in fiscal year 1975; \$3,000,000 in fiscal year 1976; \$3,000,000 in fiscal year 1977; and \$3,000,000 in fiscal year 1978.”

Approved May 24, 1974.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 93-992 accompanying H.R. 296 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 93-163 (Comm. on Interior and Insular Affairs).

CONGRESSIONAL RECORD:

Vol. 119 (1973): May 22, considered and passed Senate.

Vol. 120 (1974): May 6, considered and passed House,
amended, in lieu of H.R. 296.

May 9, Senate agreed to House amendments.

Procedures of the Advisory Council on Historic Preservation, 36 CFR 800

[4310-10-M]

**Title 36—Parks, Forests, and Public
Property**

CHAPTER VIII—ADVISORY COUNCIL ON HISTORIC PRESERVATION

PART 800—PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

Amendments to Existing Regulations

AGENCY: Advisory Council on Historic Preservation.

ACTION: Final amendments to regulations.

SUMMARY: These regulations implement Section 106 of the National Historic Preservation Act 1966, as amended (16 U.S.C. 470), and two Presidential directives issued pursuant to Section 106—Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment" (36 FR 8921, 16 U.S.C. 470), and the President's Memorandum on Environmental Quality and Water Resources Management, July 12, 1978. The regulations have been amended to reflect changes and additions to the Council's authorities, as well as experience gained in working with the process since the last publication of regulations in 1974. These amendments are intended to expedite and clarify the commenting process required by Section 106 of the National Historic Preservation Act.

EFFECTIVE DATE: March 1, 1979.

**FOR FURTHER INFORMATION
CONTACT:**

John M. Fowler, Acting General Counsel, Advisory Council on Historic Preservation, 1522 K Street, NW, Washington, D.C. 20005, 202-254-3967.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Advisory Council on Historic Preservation is publishing these final amendments to its existing regulations to implement Section 106 of the National Historic Preservation Act, as amended (16 U.S.C. 470f). The purpose of Section 106 is to protect properties included in or eligible for inclusion in the National Register of Historic Places through review and comment by the Council on Federal undertakings that affect such properties. Properties are listed on the National Register or declared eligible for listing by the Secretary of the Interior. As implemented through these regulations, the Section 106 process is a public interest process in which the Federal agency proposing an undertaking, the State Historic Preservation Officer, the Council, and interested organizations and individuals participate. The process is designed to assure that alternatives to avoid or mitigate an adverse effect on a National Register or eligible property are adequately considered in the planning processes. The regulations are binding on all Federal agencies and specify the manner in which the Council will render its comments to Federal agencies when their undertakings affect properties included in or eligible for inclusion in the National Register of Historic Places. To facilitate processing of the large volume of cases submitted for Council comment each year, the regulations provide for agency consultation with the Council staff and State Historic Preservation Officers to reduce the number of undertakings that require consideration by the full Council.

The purpose of the present amendments is to reduce procedural delay, encourage agencies to develop internal regulations to comply with the re-

quirements of the Act and these regulations, to clarify the process since the last publication of the Council's regulations in 1974, and to implement the directives in the President's Memorandum on Environmental Quality and Water Resources Management.

In late 1977, the Council staff began a reassessment of the existing regulations codified in 1974 in 36 CFR Part 800, in an effort to determine what changes, clarifications, or modifications were necessary. In July of 1978, the President issued the Memorandum on Environmental Quality and Water Resources Management which directed the Chairman of the Council to review and promulgate regulations implementing the Act and the Memorandum by March 1, 1979. Accordingly, the existing regulations were amended to reflect changes in statutory authority, experience gained in implementing the procedures since 1974, and to meet the demands of the President's Memorandum.

The Council published proposed amendments to the existing regulations in the *FEDERAL REGISTER* on October 30, 1978, and invited public comment for a 30 day period. A number of Federal agencies and others requested extension of the comment period. On November 28, 1978, the Council published notice in the *FEDERAL REGISTER* extending the comment period for an additional thirty days until December 29, 1978, providing for a 60 day comment period in total. A public briefing for interested agencies, organizations, and individuals on the proposed amendments was held on December 11, 1978. Council staff also actively cooperated with the Secretary of the Interior's Water Policy Implementation Task Force on Environmental Statutes. The Task Force was convened in response to the directives contained in the President's Memorandum. The Task Force was charged with reviewing the draft regulations and informally offering comments to the Council on whether the regulations comply with the directive.

Pursuant to the President's Memorandum, agencies with consultation re-

sponsibilities under the Act must develop regulations to be approved by the Chairman of the Council in response to these regulations. Such agencies must publish regulations no later than three months after the effective date of these regulations. Other agencies may choose to adopt counterpart regulations specifically tailored to their particular program needs as stipulated in these regulations.

These regulations issued pursuant to 16 U.S.C. 470s were adopted by unanimous vote of the full Council in open session on January 17, 1979. As directed by the President, the amended regulations will be effective March 1, 1979.

SUMMARY OF MAJOR CHANGES

The flow of the commenting process established by the 1974 regulations remains basically unchanged in the present amendments. However, the regulations have been renumbered and rearranged from the 1974 publication for greater clarity. The following major changes have been made in the regulations:

1. Section 800.4(a) has been substantially revised to provide further guidance to Federal agencies on the identification of National Register and eligible properties.

2. A new § 800.5 has been added to define the responsibilities of State Historic Preservation Officers in the commenting process.

3. Section 800.6(d) authorizes the Chairman to appoint a panel of five members of the Council to consider undertakings in lieu of consideration by the full Council.

4. A new § 800.7 has been added dealing with resources discovered during construction.

5. A new § 800.8 has been added dealing with Programmatic Memoranda of Agreement allowing an agency to obtain the Council's comments for a particular program or class of undertakings that would otherwise require numerous individual requests for comments.

6. Section 800.9 revises the original section dealing with the National Environmental Policy Act to reflect new Council on Environmental Quality regulations.

7. A new §800.11 has been added to authorize counterpart regulations permitting agencies to develop regulations which, if approved by the Chairman, may be used to meet certain requirements of these regulations.

8. A new §800.15 has been added dealing with public participation in the Section 106 review process.

9. A new §800.14 has been added on Supplementary Guidance. The Supplementary Guidelines included in the proposed amendments have been deleted. Supplementary Guidelines II and IV have been included in §800.13.

10. Throughout the amended regulations, time limits have been established to expedite the process while encouraging maximum public participation.

COMMENTS AND THE COUNCIL'S RESPONSE

The Council received 128 comments prior to the close of the comment period on December 29, 1978. An additional 16 comments were received between December 30, 1978, and the Council meeting on January 17 and 18, 1979. All comments were submitted to the Council members for review prior to the meeting. Comments were received from 32 Federal agencies, 27 State Historic Preservation Officers, 33 State or local governments, and 52 private organizations or individuals, and one U.S. Senator.

SECTION 800.1 PURPOSE AND AUTHORITIES

The section was slightly reworded in response to several suggestions to make the language closer to that of the Act and Executive Order. A section was added summarizing the President's Memorandum on Environmental Quality and Water Resources Management.

SECTION 800.2 DEFINITIONS

Section 800.2(c) was clarified in response to several agency comments

that the scope of the term "undertaking" was too broad and unclear. Of particular concern was the inclusion of activities proposed by Federal agencies for Congressional authorization or appropriation. This definition is not to be construed as requiring general program authorization and program appropriation requests to be reviewed under these regulations. The purpose is to ensure proper and timely consideration of specific activities that will have significant impacts on National Register or eligible properties and that provide limited opportunity after Congressional action to consider alternatives to avoid or mitigate these impacts. Such activities are usually major Federal construction projects that are proposed for Congressional approval at a specific site or with specific design features, such as a dam. Section 106 review would be appropriate prior to authorization or, in the case of projects authorized without prior Section 106 compliance, during the agency's formulation of a budget request to be submitted to the Office of Management and Budget. In either event agencies should complete their Section 106 responsibilities prior to making submissions to the Office of Management and Budget. Agencies will comply with the requirements of OMB Circular A-10, which concerns budget confidentiality.

Authorizations for programs that will have uniform adverse effects on National Register or eligible properties and where the legislative terms of authorization may severely limit the opportunity to avoid or mitigate adverse effects on a case by case basis are also included. An example would be the recent Special Bridge Replacement Program, which, in its original form, prohibited the use of funds for anything but replacement of unsafe bridges. The result was that alternatives such as rehabilitation were foreclosed when a particular National Register or eligible bridge was proposed for replacement. When seeking Council comments on such a program agencies should follow the provisions of §800.8, "Programmatic Memorandum of Agreement."

The definition of eligible property contained in § 800.2(f) has been rewritten to more closely reflect statutory language and was changed in response to a Federal member agency. Several commenters were of the opinion that the Council should review only those undertakings affecting properties actually listed on the National Register. Such a limitation is contrary to the mandate of the National Historic Preservation Act, and was not adopted.

A definition of the area of the undertaking's potential environmental impact is contained in § 800.2(o). Several comments expressed concern about the difficulty in defining this term. The definition no longer includes reference to secondary effects and is consistent with the definition adopted by the Council on Environmental Quality. This new section has been modified since the draft amendments by the addition of the requirement that the boundaries of such an area are to be determined by the Agency Official and the State Historic Preservation Officer.

Section 800.2(p), Consulting Parties, is a new section. Many commenters expressed confusion as to who the parties to the consultation process were.

SECTION 800.3 CRITERIA OF EFFECT AND ADVERSE EFFECT

Section 800.3 was the subject of many comments. The entire section has been reworked for greater clarity. A definition of direct and indirect effects has been added and the definition deliberately tracks that used by the Council on Environmental Quality for purposes of the National Environmental Policy Act. The new language of this section is now tied closely to the National Register Criteria. One commenter suggested that only significant effects be covered by these regulations. This comment was not adopted because it is contrary to statutory requirements.

SECTION 800.4 FEDERAL AGENCY RESPONSIBILITIES

This section describes the means by which a Federal agency should identi-

fy National Register or eligible properties and determine whether an undertaking affects such properties and provides for coordination with the State Historic Preservation Officers. A large number of comments were received on the entire section. Many Federal agencies felt that further clarification of the entire section was needed. In response to these comments, the section has been re-structured. The Council has adopted a reasonable effort standard for Federal agencies to meet in identifying National Register and eligible properties. Federal agency responsibilities for determination of effect are also set forth in this section. The ultimate responsibility for compliance with the regulations rests with the Federal agency and cannot be delegated by it.

Section 800.4(a) has been altered in response to numerous comments including several from Federal agencies. The section has been re-drafted to set forth a logical sequence needed to identify properties. Throughout the process of identification, there should be consultation between the Agency Official and the State Historic Preservation Officer. The section makes clear that an agency can request the Council's comments simultaneously with a request for eligibility from the Secretary of the Interior. The Council believes that the reorganized section is clearer and that it will allow agencies to know in more precise terms what is required to identify National Register or eligible properties.

Section 800.4(b), Determination of Effect, also received numerous comments from Federal agencies and others. The section on No Effect (800.4(b)(1)) has been clarified concerning how an objection can be made and the manner in which the Executive Director will respond.

Section 800.4(c) concerning Determination of No Adverse Effect has been clarified in response to several comments. No Adverse Effect Determinations must be made in consultation with the appropriate State Historic Preservation Officer and evidence of contact with a State Historic Preserva-

tion Officer must be included in the documentation forwarded to the Council if the State Historic Preservation Officer does not respond to a request under the provisions of § 800.5.

Section 800.4(d) has been slightly altered in response to several comments. The transmittal of a Preliminary Case Report will be the request for the comments of the Council.

A new § 800.4(e) has been added providing that good faith consultation would prevent an agency from proceeding with an undertaking until the Council has provided its comments. The section, while appearing in substantially the same form in several sections in the draft amendments, is now one section. It is included as one section at the request of a Federal agency member of the Council.

SECTION 800.5 STATE HISTORIC PRESERVATION OFFICER RESPONSIBILITIES

Section 800.5, State Historic Preservation Officer Responsibilities, is a new section. The section establishes deadlines for response on the part of this official, after which the process may continue if no response has been received. Pursuant to a substantial number of comments, however, lack of response by the State Historic Preservation Officer will no longer be deemed concurrence, although the review may still proceed. Several commenters suggested that the "shoulds" used in this section be changed to "shalls." The suggestion was rejected because the Council lacks authority to impose mandatory requirements on these State officials.

SECTION 800.6 COUNCIL COMMENTS

This section concerns the manner in which the Council will render its comments. There were a substantial number of comments on this section. In response to these comments, numerous changes were made to clear up ambiguities and make the Council's commenting process more expeditious.

Section 800.6(a) concerns the manner in which the Executive Director will respond to an agency Determination of No Adverse Effect. In re-

sponse to comments, a specific time limit has been placed on the Executive Director's acceptance of adequate documentation and the time period for review of such Determinations of No Adverse Effect has been reduced from the 45 days stipulated in the 1974 regulations to 30 days.

A new § 800.6(a)(2) provides that the Executive Director may specify conditions to remove an objection to a No Adverse Effect Determination. Several commenters suggested that the State Historic Preservation Officer should be included in this process. It is the intention of the Council to include the State Historic Preservation Officer through the addition of a provision in § 800.6(a)(2) which allows the Executive Director to consult the State Historic Preservation Officer and other interested parties.

Section 800.6(b) parallels the existing regulations. However, several changes have been made, including provisions for specific time limits throughout the consultation process. Although a number of commenters felt that parties in interest to an undertaking should have the status of a consulting party, these comments were not adopted because the Council does not believe that it can impose such a uniform requirement due to the wide variety of agency programs. At the request of several Federal agencies, a lead agency provision is also included in this section.

In response to comments, § 800.6(b)(3) has been changed to provide that the public information meeting should be held near the site of the undertaking.

A new § 800.6(b)(6) on acceptance of adverse effect has been included. Previously, the Council equated acceptance of Adverse Effect with mitigation measures such as recording of a structure that was being demolished. The Council realizes that there are circumstances in which adverse effects on National Register or eligible properties must be accepted in the public interest. In such instances, the adverse effect will be accepted, generally with a proviso that a recording effort be part of the agreement.

Section 800.6(b)(7) has been clarified in response to comments. Any one of the consulting parties may declare a failure in the consultation process upon written notice to the Executive Director who is required to notify the Chairman of the failure within 15 days.

Section 800.6(c) concerning the Memorandum of Agreement has been rewritten in response to comments. An important change from the existing regulations is an expedited method for preparing the Memorandum of Agreement. A Federal agency will prepare a proposal, which together with the written concurrence of the State Historic Preservation Officer can be transmitted to the Executive Director and incorporated into the Memorandum of Agreement.

Many commenters agreed with the Council that this would speed up the process, but only if there were time limits placed on the process for ratification of an agreement. The Council agreed and a limit of 10 days has been imposed for transmittal of such Memoranda to the Chairman.

A new § 800.6(c)(3) dealing with the effect of a Memorandum of Agreement has been added. This subsection provides that if an agency fails to carry out the terms of the agreement that the comments of the Council must again be requested. Several commenters suggested that in such instances agencies should be admonished that no further action on the undertaking should proceed until the Council has commented. The Council agrees and this section has been revised accordingly.

In response to comments, § 800.6(c)(4) has been changed to provide that any signatory to the agreement can request a change in the terms. At the request of several commenters a new section has also been added which requires the Agency Official to provide a report on actions taken to carry out the terms of the agreement.

Section 800.6(d) dealing with Council meetings has been revised in response to comments. When the Chairman decides against consideration by

the Council of a proposed undertaking, it can be scheduled if three members of the Council object. The proposed amendments would have required that a majority of the members object. Numerous commenters felt that such a large number was unrealistic. A major change from the 1974 regulations is the provision for a panel of members to consider an undertaking on behalf of the full Council. Such a panel would be composed of 5 members, three non-Federal members and two Federal members, neither of whom represents the agency proposing the undertaking. The Council believes that this provision will serve to both increase the number of cases referred for Council consideration and to expedite those cases. Several Council members felt that consideration of an undertaking by a panel would not be representative of the full range of views provided by the entire Council membership. After discussion at the full Council meeting on January 17, 1979, it was agreed that panel consideration of an undertaking may be advantageous in some situations. However, the Council felt that this provision should be re-examined in one year to determine the effectiveness of panel review of undertakings.

A number of comments were received on the section dealing with the review of a panel decision. Many commenters pointed out that an appeal of a panel decision by any one of the parties involved as proposed in the draft amendments could actually delay the process rather than speeding it up. The Council agrees with this assessment and the appeal provision has been deleted. However, if an agency determines not to follow the comments of a panel after considering the comments, it must provide notice to the Chairman in order to provide opportunity to have the matter considered by the full Council. Because of the nature of panel consideration of an undertaking, the comments were not adopted which suggested that no consideration of an undertaking beyond a panel was necessary.

In response to comments, time limits for notice of Council meetings and

statements to the Council have been extended to provide ample opportunity for public participation. Section 800.6(d)(5) has been changed to provide that the comments of the Council will be issued within 15 days after a meeting and that such comments will be made available to interested parties, including the State Historic Preservation Officer.

SECTION 800.7 RESOURCES DISCOVERED DURING CONSTRUCTION

This section was proposed as an addition to the 1974 regulations. As originally proposed, the section was intended to establish a limited time period for the Council to provide its comments to an agency when a resource eligible for the National Register was discovered during the actual construction of a project after an agency had previously completed its Section 106 responsibilities. While there were several unqualified endorsements, the majority of the commenters felt that the section as proposed would cause undue project delays resulting in additional costs. The section was substantially rewritten in light of these comments. The mandatory halt of construction has been eliminated, although the Council believes that good faith consultation requires that an agency make reasonable efforts to avoid foreclosing options while the Council's comments are being sought. As drafted, §800.7 applies only to those resources discovered during construction that meet the National Register Criteria. Agencies that discover National Register eligible properties during construction are required to comply with the provisions of the Archeological and Historic Preservation Act of 1974. The Council is adopting, as the standard for Section 106 compliance, mitigation acceptable to the Secretary of the Interior under the provisions of the Archeological and Historic Preservation Act. Therefore, an agency will be deemed to have met its responsibilities to afford the Council an opportunity to comment if it complies with the provisions of the Archeological and Historic Preservation

Act, unless the Secretary determines that certain aspects of the undertaking warrant Council consideration. If Council consideration is determined to be necessary, a 30-day time limit has been placed on the transmittal of comments. The Council believes that this provision will serve to reduce time delays and effectively protect the resource.

SECTION 800.8 PROGRAMMATIC MEMORANDUM OF AGREEMENT

This section was developed as a means of allowing the Council to comment on a particular program or class of actions that would otherwise require multiple individual requests for comments under the regulations. This will expedite the review process and eliminate individual reviews of undertakings that are repetitive in nature. For example, the Council has executed a programmatic agreement with the National Park Service concerning the Park planning system. Under the terms of the agreement, individual actions taken to implement a master plan for a particular park that has previously been reviewed by the Council will normally not be subjected to further Council review.

A number of commenters suggested that the process include the State Historic Preservation Officers in States affected by such an agreement or the National Conference of State Historic Preservation Officers when the agreement is nationwide in scope. The regulations have been revised to specifically allow for such participation. Other changes have been made in the section to clarify ambiguities pointed out by a number of commenters.

SECTION 800.9 COORDINATION WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

This section sets forth the manner in which the review conducted under Section 106 should be coordinated with that required by the National Environmental Policy Act. This section elaborates on §800.2 of the 1974 regulations and has been developed in consultation with the staff of the Council

on Environmental Quality. It is the intention of the two agencies to issue joint supplementary guidance on this subject in the near future. The purpose of the section is to combine to the maximum extent possible the information on resources, evaluation of effects, and analysis of alternatives required by the separate statutes. For most projects, the Council's comments should be requested during the preparation of the draft environmental impact statement. Some commenters noted several classes of Federal projects which cannot be coordinated in this manner. The regulations have been revised to specifically provide for this situation. It is the Council's objective to provide its comments on an agency undertaking that requires an environmental impact statement in time to be included in the final statement. This should result in less paperwork and reduce delays in fulfilling agency environmental review responsibilities by allowing a single document to be used to meet the information requirements of both statutes.

SECTION 800.10 COORDINATION WITH THE PRESIDENT'S MEMORANDUM ON ENVIRONMENTAL QUALITY AND WATER RESOURCES MANAGEMENT

This section recapitulates the mandates contained in the Memorandum to agencies with water resources responsibilities to develop regulations to implement the Council's Section 106 regulations. A number of commenters requested the Council to add requirements for additional review of the required regulations and to develop stringent standards for the regulations. The Council will issue guidance to agencies to develop such regulations.

SECTION 800.11 COUNTERPART REGULATIONS

This section has been revised to allow Federal agencies greater flexibility in implementing the procedural requirements of these regulations. Section 800.11 as proposed in the draft amendments dealt briefly with the development of agency procedures under

Section 1(3) of Executive Order 11593. The revised section was developed from suggestions received from several Federal agencies. Under this section, an agency may choose to develop counterpart regulations that can be tailored to meet the specific requirements of its planning and decision making processes. Section 800.11 would permit agencies to develop counterpart regulations for meeting their responsibilities under Section 800.4. This section requires that the regulations be jointly drafted with the Executive Director and approved by the Chairman and provides an opportunity for public participation.

SECTION 800.12 INVESTIGATION OF THREATS TO NATIONAL REGISTER AND ELIGIBLE PROPERTIES

This section deals with situations where the Council has reason to believe that a Federal undertaking affecting a National Register or eligible property has not been reviewed in accordance with these regulations. Several clarifications were made to this section in response to specific comments. Some Federal agencies expressed a desire that the Council use discretion in investigating such threats. The Council intends to do so. Previously, these provisions were included in § 800.13(b). In the draft of the proposed amendments § 800.13(a) included a provision for comment or report on non-Federal undertakings. This section has been deleted because it is based on the Council's general advisory authorities under Section 202 of the Act and not on Section 106. The Council will continue to exercise its general advisory authority under Section 202 and will consider matters in the public interest.

SECTION 800.13 REPORTS TO THE COUNCIL

This section sets standards for information that should be provided to the Council to enable it to make informed comments on Federal undertakings. Sections 800.13(a) and (b) were previously included in the Supplementary Guidelines section. A large number of

commenters requested that these standards for adequate documentation be codified. The Council agrees with these comments and believes that codifying these sections will make the requirements clear to all the consulting parties and the public. Section 800.13(c) dealing with Reports for Council Meetings includes a new section prescribing the Secretary of the Interior's Report. This section requests the Secretary to verify existing information on the historical or cultural significance of a National Register or eligible property and reflects the current practice of the Council. A number of commenters felt that the section was not entirely clear concerning how reports for Council meetings should be coordinated. The section has been re-drafted to respond to these comments.

SECTION 800.14 SUPPLEMENTARY GUIDANCE

This is a new section which provides that the Executive Director may issue further guidance to interpret certain portions of the regulations.

SECTION 800.15 PUBLIC PARTICIPATION

This is a new section which is designed to encourage public participation throughout the process established by the regulations. A number of comments urged that the regulations contain more explicit direction concerning the means of involving the public. Several suggested that such reference to public participation be included in various specific sections. The Council believes that a specific section dealing with public participation will best serve to fulfill the intended purpose of involving the public. The Council notes that its process is advisory and does not constitute formal administrative hearings. Therefore, this section is intended for guidance and is not to be construed as setting a strict legal standard. For example, the use of the word "notice" in subsection (b) is not intended to be a formal legal requirement, but rather a means of informing the public of an opportunity to participate in the process.

OTHER

The Supplementary Guidelines contained in the publication of the draft amendments have been deleted. Supplementary Guidelines II and IV have been codified as part of § 800.13. Supplementary Guideline I, the Criteria of the National Register of Historic Places, is contained in 36 CFR 60.6. Supplementary Guideline III, Determinations of No Effect and No Adverse Effect for Archeological Resources, will not be published at the present time. The Council's Task Force on Archeology will be considering this guideline and it will be revised based upon recommendations of the Task Force. This Guideline received numerous comments and they have been provided to the Task Force for its consideration.

CONCLUSION

The Council made a conscientious effort to incorporate all valid comments in these final amendments. As noted, revisions have been made to the regulations which we believe will serve to make the Section 106 commenting process an open and public process that can be tailored to the needs of individual agencies. The Council believes that the regulations set a clear standard for agencies to follow in meeting their Section 106 responsibilities, while being sufficiently flexible to respond to the wide variety of agency programs and needs.

The Council has determined that these amendments are not significant regulations within the meaning of Executive Order 12044 and consequently do not require a regulatory analysis. The purpose of these amendments is to simplify existing regulations and to clarify language in conformance with the goals enunciated by Executive Order 12044.

The Council has determined that an Environmental Impact Statement under the National Environmental Policy Act is not required.

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Part 800 is revised to read as set forth below:

PART 800—PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

Sec.

800.1 Purpose and authorities.

800.2 Definitions.

800.3 Criteria of effect and advance effect.

REVIEW OF INDIVIDUAL UNDERTAKINGS

800.4 Federal Agency Responsibilities.

800.5 State Historic Preservation Officer Responsibilities.

800.6 Council comments.

800.7 Resources discovered during construction.

FEDERAL PROGRAM COORDINATION

800.8 Programmatic Memorandum of Agreement.

800.9 Coordination with the National Environmental Policy Act (42 U.S.C. 4321 et seq.)

800.10 Coordination with the Presidential Memorandum on environmental quality and water resources management.

800.11 Counterpart regulations.

OTHER PROVISIONS

800.12 Investigation of threats to historic properties.

800.13 Reports to the Council.

800.14 Supplementary guidance.

800.15 Public participation.

AUTHORITY: Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978); E.O. 11593, 3 CFR 1971 Comp. p. 154; President's Memorandum on Environmental Quality and Water Resources Management, July 12, 1978.

§ 800.1 Purpose and authorities.

(a) The National Historic Preservation Act of 1966, as amended, estab-

lished the Advisory Council on Historic Preservation as an independent agency of the United States to advise the President and the Congress on historic preservation matters, recommend measures to coordinate Federal historic preservation activities, and comment on Federal actions affecting properties included in or eligible for inclusion in the National Register of Historic Places. Its members are the Secretary of the Interior, the Secretary of Housing and Urban Development, the Secretary of Commerce, the Administrator of General Services, the Secretary of the Treasury, the Attorney General, the Secretary of Agriculture, the Secretary of Transportation, the Secretary of State, the Secretary of Defense, the Secretary of Health, Education, and Welfare, the Chairman of the Council on Environmental Quality, the Chairman of the Federal Council on the Arts and Humanities, the Architect of the Capitol, the Secretary of the Smithsonian Institution, the Chairman of the National Trust for Historic Preservation, the President of the National Conference of State Historic Preservation Officers, and 12 citizen members from outside the Federal Government appointed for five-year terms by the President on the basis of their interest and experience in the matters to be considered by the Council.

(b) The Council protects properties of historical, architectural, archeological, and cultural significance at the national, State, and local level by reviewing and commenting on Federal actions affecting National Register and eligible properties in accordance with the following authorities:

(1) Section 106 of the National Historic Preservation Act. Section 106 requires that Federal agencies with direct or indirect jurisdiction over a Federal, federally assisted or federally licensed undertaking afford the Council a reasonable opportunity for comment on such undertakings that affect properties included in or eligible for inclusion in the National Register of Historic Places prior to the agency's approval of any such undertaking.

(2) Section 1(3) of Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment." Section 1(3) requires that Federal agencies, in consultation with the Council, institute procedures to assure that their plans and programs contribute to the preservation and enhancement of non-federally owned historic and cultural properties.

(3) Section 2(b) of Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment." Federal agencies are required by Section 2(a) of the Executive Order to locate, inventory, and nominate properties under their jurisdiction or control to the National Register. Until such processes are complete, Federal agencies must provide the Council an opportunity to comment on proposals for the transfer, sale, demolition, or substantial alteration of federally owned properties eligible for inclusion in the National Register.

(4) The President's Memorandum on Environmental Quality and Water Resources Management. The Memorandum directs the Council to issue final regulations under the National Historic Preservation Act by March 1, 1979, and further directs Federal agencies with water resource responsibilities and programs to publish procedures implementing the Act not later than three months after promulgation of final regulations by the Council. Federal agencies' procedures are to be reviewed and, if they are consistent with the Council's regulations, approved by the Council within 60 days and published in final form.

§ 800.2 Definitions.

As used in these regulations:

(a) "National Historic Preservation Act" means Pub. L. 89-665, approved October 15, 1966, an "Act to establish a program for the preservation of additional historic properties throughout the Nation and for other purposes" (80 Stat. 915, 16 U.S.C. 470, as amended; 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978)), hereinafter referred to as "the Act."

(b) "Executive Order" means Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment" (36 FR 8921, 16 U.S.C. 470).

(c) "Undertaking" means any Federal, federally assisted or federally licensed action, activity, or program or the approval, sanction, assistance, or support of any non-Federal action, activity, or program. Undertakings include new and continuing projects and program activities (or elements of such activities not previously considered under Section 106 or Executive Order 11593) that are: (1) Directly undertaken by Federal agencies; (2) supported in whole or in part through Federal contracts, grants, subsidies, loans, loan guarantees, or other forms of direct and indirect funding assistance; (3) carried out pursuant to a Federal lease, permit, license, certificate, approval, or other form of entitlement or permission; or, (4) proposed by a Federal agency for Congressional authorization or appropriation. Site-specific undertakings affect areas and properties that are capable of being identified at the time of approval by the Federal agency. Non-site-specific undertakings have effects that can be anticipated on National Register and eligible properties but cannot be identified in terms of specific geographical areas or properties at the time of Federal approval. Non-site-specific undertakings include Federal approval of State plans pursuant to Federal legislation, development of comprehensive or area-wide plans, agency recommendations for legislation and the establishment or modification of regulations and planning guidelines.

(d) "National Register" means the National Register of Historic Places. It is a register of districts, sites, buildings, structures, and objects of national, State, or local significance in American history, architecture, archeology, and culture that is expanded and maintained by the Secretary of the Interior under authority of section 2(b) of the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461) and Section 101(a)(1) of the National Historic

Preservation Act implemented through 36 CFR Part 60. The National Register is published in its entirety in the FEDERAL REGISTER each year in February. Addenda are usually published on the first Tuesday of each month.

(e) "National Register property" means a district, site, building, structure, or object included in the National Register.

(f) "Eligible property" means any district, site, building, structure, or object that meets the National Register Criteria.

(g) "National Register Criteria" means the criteria established by the Secretary of the Interior to evaluate properties to determine whether they are eligible for inclusion in the National Register. (See 36 CFR 60.6.)

(h) "Decision" means the exercise of or the opportunity to exercise discretionary authority by a Federal agency at any stage of an undertaking where alterations might be made in the undertaking to modify its impact upon National Register and eligible properties.

(i) "Agency Official" means the head of the Federal agency having responsibility for the undertaking or a designee authorized to act for the Agency Official.

(j) "Council" means the Advisory Council on Historic Preservation as established by Title II of the Act.

(k) "Chairman" means the Chairman of the Advisory Council on Historic Preservation or a member designated to act for the Chairman.

(l) "Executive Director" means the Executive Director of the Advisory Council on Historic Preservation as established by Section 205 of the Act, or a designee authorized to act for the Executive Director.

(m) "State Historic Preservation Officer" means the official, who is responsible for administering the Act within the State or jurisdiction, or a designated representative authorized to act for the State Historic Preservation Officer. These officers are appointed pursuant to 36 CFR Part 61.2

by the Governors of the 50 States, Guam, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Mariana Islands, and the Mayor of the District of Columbia.

(n) "Secretary" means the Secretary of the Interior or a designee authorized to carry out the historic preservation responsibilities of the Secretary under the Act, Executive Order 11593, and related authorities.

(o) "Area of the undertaking's potential environmental impact" means that geographical area within which direct and indirect effects generated by the undertaking could reasonably be expected to occur and thus cause a change in the historical, architectural, archeological, or cultural qualities possessed by a National Register or eligible property. The boundaries of such area should be determined by the Agency Official in consultation with the State Historic Preservation Officer as early as possible in the planning of the undertaking.

(p) "Consulting parties" means the Agency Official, the State Historic Preservation Officer, and the Executive Director.

§ 800.3 Criteria of effect and adverse effect.

The following criteria shall be used to determine whether an undertaking has an effect or an adverse effect in accordance with these regulations.

(a) *Criteria of Effect.* The effect of a Federal, federally assisted or federally licensed undertaking on a National Register or eligible property is evaluated in the context of the historical, architectural, archeological, or cultural significance possessed by the property. An undertaking shall be considered to have an effect whenever any condition of the undertaking causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archeological, or cultural characteristics that qualify the property to meet the criteria of the

National Register. An effect occurs when an undertaking changes the integrity of location, design, setting, materials, workmanship, feeling, or association of the property that contributes to its significance in accordance with the National Register criteria. An effect may be direct or indirect. Direct effects are caused by the undertaking and occur at the same time and place. Indirect effects include those caused by the undertaking that are later in time or farther removed in distance, but are still reasonably foreseeable. Such effects may include changes in the pattern of land use, population density or growth rate that may affect on properties of historical, architectural, archeological, or cultural significance.

(b) *Criteria of Adverse Effect.* Adverse effects on National Register or eligible properties may occur under conditions which include but are not limited to:

(1) Destruction or alteration of all or part of a property;

(2) Isolation from or alteration of the property's surrounding environment;

(3) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(4) Neglect of a property resulting in its deterioration or destruction.

(5) Transfer or sale of a property without adequate conditions or restrictions regarding preservation, maintenance, or use.

REVIEW OF INDIVIDUAL UNDERTAKINGS

§ 800.4 Federal Agency responsibilities.

As early as possible before an agency makes a final decision concerning an undertaking and in any event prior to taking any action that would foreclose alternatives or the Council's ability to comment, the Agency Official shall take the following steps to comply with the requirements of Section 106 of the National Historic Preservation Act and Section 2(b) of Executive Order 11593. It is the primary responsibility of each Agency Official requesting Council comments to conduct

the appropriate studies and to provide the information necessary for an adequate review of the effect a proposed undertaking may have on a National Register or eligible property, as well as the information necessary for adequate consideration of modifications or alterations to the proposed undertaking that could avoid, mitigate, or minimize any adverse effects. It is the responsibility of each Agency Official requesting consultation with a State Historic Preservation Officer under this section to provide the information that is necessary to make an informed and reasonable evaluation of whether a property meets National Register criteria and to determine the effect of a proposed undertaking on a National Register or eligible property. Although a Federal agency may require non-Federal parties to undertake certain steps required by these regulations as a prerequisite to Federal action and may authorize non-Federal participation under this section and in the consultation process under Section 800.6 pursuant to approved counterpart regulations, the ultimate responsibility for compliance with these regulations remains with the Federal agency and cannot be delegated by it.

(a) *Identification of National Register and Eligible Properties.* It is the responsibility of each Federal agency to identify or cause to be identified any National Register or eligible property that is located within the area of the undertaking's potential environmental impact and that may be affected by the undertaking.

(1) The Agency Official shall consult the State Historic Preservation Officer, the published lists of National Register and eligible properties, public records, and other individuals or organizations with historical and cultural expertise, as appropriate, to determine what historic and cultural properties are known to be within the area of the undertaking's potential environmental impact. The State Historic Preservation Officer should provide the Agency Official with any information available on known historic and cultural properties identified in the area

(whether on the National Register or not), information on any previous surveys performed and an evaluation of their quality, a recommendation as to the need for a survey of historic and cultural properties, and recommendations as to the type of survey and/or survey methods should a survey be recommended, and recommendations on boundaries of such surveys.

(2) The Agency Official shall, after due consideration of the information obtained pursuant to § 800.4(a)(1), determine what further actions are necessary to discharge the agency's affirmative responsibilities to locate and identify eligible properties that are within the area of the undertaking's potential environmental impact and that may be affected by the undertaking. Such actions may include a professional cultural resource survey of the environmental impact area, or parts of the area, if the area has not previously been adequately surveyed. The recommendations of the State Historic Preservation Officer should be followed in this matter.

(3) The Agency Official, in consultation with the State Historic Preservation Officer, shall apply the National Register criteria to all properties that may possess any historical, architectural, archeological, or cultural value located within the area of the undertaking's potential environmental impact. If either the Agency Official or the State Historic Preservation Officer finds that a property meets the National Register Criteria or a question exists as to whether a property meets the Criteria, the Agency Official shall request a determination of eligibility from the Secretary of the Interior in accordance with 36 CFR Part 63. The opinion of the Secretary respecting the eligibility of a property shall be conclusive for the purposes of these regulations. If the Agency Official and the State Historic Preservation Officer agree that no identified property meets the Criteria, the Agency Official shall document this finding and, unless the Secretary has otherwise made a determination of eligibility under 36 CFR Part 63, may proceed with the undertaking.

(4) The Agency Official shall complete the preceding steps prior to requesting the Council's comments pursuant to Section 800.4(b)-(d). The Agency Official may, however, initiate a request for the Council's comments simultaneously with a request for a determination of eligibility from the Secretary when the Agency Official and the State Historic Preservation Officer agree that a property meets the National Register Criteria. Before the Council completes action pursuant to § 800.6, the Secretary must find the property eligible for inclusion in the National Register.

(b) *Determination of Effect.* For each National Register or eligible property that is located within the area of the undertaking's potential environmental impact, the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Effect, (§ 800.3(a)), to determine whether the undertaking will have an effect upon the historical, architectural, archeological, or cultural characteristics of the property that qualified it to meet National Register Criteria.

(1) *No Effect.* If the Agency Official, in consultation with the State Historic Preservation Officer, finds that the undertaking will not affect these characteristics, the undertaking may proceed. The Agency Official shall document each Determination of No Effect, which shall be available for public inspection. If the State Historic Preservation Officer objects or other timely objection is made to the Executive Director to an Agency Official's Determination of No Effect, the Executive Director may review the Determination and advise the Agency Official, the State Historic Preservation Officer and any objecting party of the findings within 15 days.

(2) *Effect determined.* If the Agency Official or the Executive Director finds that the undertaking will have an effect upon these characteristics, the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Adverse Effect, set forth in section 800.3(b), to determine whether the

effect of the undertaking may be adverse.

(c) *Determinations of no adverse effect.* If the Agency Official, in consultation with the State Historic Preservation Officer, finds the effect on the historical, architectural, archeological, or cultural characteristics of the property not to be adverse, the Agency Official shall forward adequate documentation (See § 800.13(a)) of the Determination, including written evidence of the views of the State Historic Preservation Officer, to the Executive Director for review in accordance with Section 800.6. If the State Historic Preservation Officer fails to respond to an Agency Official's request as provided in Section 800.5, the Agency Official shall include evidence of having contacted the State Historic Preservation Officer.

(d) *Adverse effect determination.* If the Agency Official finds the effect on the historical, architectural, archeological, or cultural characteristics of the property to be adverse, or if the Executive Director does not accept an Agency Official's Determination of No Adverse Effect pursuant to review under Section 800.6, the Agency Official shall:

(1) Prepare and submit a Preliminary Case Report requesting the comments of the Council (See § 800.13(b)),

(2) Notify the State Historic Preservation Officer of this request, and

(3) Proceed with the consultation process set forth in § 800.6.

(e) *Suspense of action.* Until the Council issues its comments under these regulations, good faith consultation shall preclude a Federal agency from taking or sanctioning any action or making any irreversible or irretrievable commitment that could result in an adverse effect on a National Register or eligible property or that would foreclose the consideration of modifications or alternatives to the proposed undertaking that could avoid, mitigate, or minimize such adverse effects.

§ 800.5 State Historic Preservation Officer responsibilities.

(a) The State Historic Preservation Officer should participate in the

review process established by these regulations whenever it concerns an undertaking located within the State Historic Preservation Officer's jurisdiction.

(b) Unless a longer time is agreed to by the Agency Official, the failure of a State Historic Preservation Officer to respond to an Agency Official's request for consultation under Section 800.4 within 30 days after receipt shall not prohibit the Agency Official from proceeding with the review process under these regulations.

(c) The State Historic Preservation Officer, with the Agency Official and the Executive Director, should participate in any consultation under § 800.6(b) and sign any Memorandum of Agreement developed under § 800.6(c) of these regulations. Failure of a State Historic Preservation Officer to participate in a consultation under § 800.6(b) or to sign a Memorandum of Agreement as provided in § 800.6(c)(1) within 30 days of receipt without notifying the Executive Director and the Agency Official that the State Historic Preservation Officer disagrees with the terms of the Agreement shall not prohibit the Executive Director and the Agency Official from concluding the Agreement and having it ratified by the Chairman in accordance with § 800.6(c)(2).

§ 800.6 Council comments.

The following subsections specify how the Council will respond to Federal agency requests for the Council's comments required to satisfy an agency's responsibilities under Section 106 of the Act and Section 2(b) of the Executive Order.

(a) *Response to determinations of no adverse effect.* (1) Upon receipt of a Determination of No Adverse Effect from an Agency Official, the Executive Director will review the Determination and supporting documentation. Normally, the Executive Director will concur without delay. If the documentation is not adequate, the Executive Director will so inform the Agency Official within 15 days. Unless the Executive Director objects to the Determination within 30 days after receipt

of an adequately documented Determination, the Agency Official will be considered to have satisfied the agency's responsibilities under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations, and may proceed with the undertaking.

(2) If the Executive Director objects to a Determination of No Adverse Effect, the Executive Director shall specify the basis for the objection and may specify conditions which will eliminate the objection. As appropriate, the Executive Director may consult the Agency Official, the State Historic Preservation Officer, and other interested parties in specifying conditions. If the Agency Official accepts the conditions in writing, the conditions will be incorporated into the agency's Determination and the Executive Director's objection will be withdrawn. The Agency Official then will be considered to have satisfied the agency's responsibilities under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations, and may proceed with the undertaking.

(3) If the Agency Official does not accept the Executive Director's conditions or if the Executive Director objects to a Determination of No Adverse Effect without specifying conditions that would remove the objection, the Executive Director shall initiate the consultation process pursuant to § 800.6(b).

(b) *Consultation Process.* The Agency Official, the State Historic Preservation Officer, and the Executive Director shall be the consulting parties to consider feasible and prudent alternatives to the undertaking that could avoid, mitigate, or minimize adverse effects on a National Register or eligible property. When an undertaking involves more than one Federal agency, these agencies may, upon notification to the Executive Director, coordinate their consultation responsibilities through a single lead agency. Grantees, permittees, licensees, or other parties in interest, and representatives of national, State, or local units of government and public and private organizations, may be invited

by the consulting parties to participate in the consultation process.

(1) *Preliminary Case Report.* The Agency Official shall provide copies of the report to the consulting parties at the initiation of the consultation and make it readily available for public inspection.

(2) *On-site inspection.* At the request of any of the consulting parties, the Agency Official shall conduct an on-site inspection.

(3) *Public Information Meeting.* At the request of any of the consulting parties, the Executive Director shall conduct a meeting open to the public, where representatives of national, State, or local units of government, representatives of public or private organizations, and interested citizens may receive information and express their views on the undertaking, its effects on the National Register or eligible property, and alternate courses of action that could avoid, mitigate, or minimize any adverse effects on such properties. The Agency Official shall provide adequate facilities for the meeting near the site of the undertaking and shall afford appropriate notice to the public, generally at least 15 days in advance of the meeting.

(4) *Consideration of Alternatives.* Upon review of the proposed undertaking and after any on-site inspection or public information meeting, the consulting parties shall determine whether there are feasible and prudent alternatives to avoid the adverse effects on National Register or eligible property. If the consulting parties cannot agree on an alternative to avoid, they shall consult further to determine if there are alternatives that could satisfactorily mitigate the adverse effects.

(5) *Avoidance or Satisfactory Mitigation of Adverse Effect.* If the consulting parties agree upon a feasible and prudent alternative to avoid or satisfactorily mitigate the adverse effects of the undertaking on the National Register or eligible property, they shall execute a Memorandum of Agreement in accordance with § 800.6(c) specifying how the undertak-

ing will proceed to avoid or mitigate the adverse effect.

(6) *Acceptance of Adverse Effect.* If the consulting parties determine that there are no feasible and prudent alternatives that could avoid or satisfactorily mitigate the adverse effects and agree that it is in the public interest to proceed with the proposed undertaking, they shall execute a Memorandum of Agreement in accordance with § 800.6(c) acknowledging this determination and specifying any recording, salvage, or other measures to minimize the adverse effects that shall be taken before the undertaking proceeds.

(7) *Failure to Agree.* Upon the failure of the consulting parties to agree upon the terms for a Memorandum of Agreement, or upon notice of such failure by any of the consulting parties to the Executive Director, the Executive Director shall notify the Chairman within fifteen days and shall recommend whether or not the matter should be scheduled for consideration at a Council meeting. The Agency Official and the State Historic Preservation Officer shall be notified in writing of the Executive Director's recommendation.

(c) *Memorandum of Agreement—(1) Preparation of Memorandum of Agreement.* It shall be the responsibility of the Executive Director to prepare each Memorandum of Agreement required under these regulations. Unless otherwise requested by the Executive Director, the Agency Official shall prepare a proposal for inclusion in the Agreement that details the actions agreed upon by the consulting parties to be taken to avoid, satisfactorily mitigate, or accept the adverse effects on the property. The State Historic Preservation Officer's written concurrence shall be included in this proposal by the Agency Official. If the Executive Director determines that the proposal represents the agreement of the consulting parties, he shall within 10 days forward it as a Memorandum of Agreement to the Chairman for ratification pursuant to § 800.6(c)(2). If the Executive Director determines that the proposal does not adequately represent the agreement reached by

the consulting parties, it may be returned to the Agency Official, or a Memorandum of Agreement revising the proposal may be submitted to the Agency Official and the State Historic Preservation Officer. As appropriate other parties in interest may be invited by the consulting parties to indicate their concurrence with the proposal or to be a signatory to the Agreement.

(2) *Review of Memorandum of Agreement.* Upon receipt of an executed Memorandum of Agreement, the Chairman shall institute a 30-day review period. Unless the Chairman notifies the Agency Official that the matter has been placed on the agenda for consideration at a Council meeting, the Agreement shall become final when ratified by the Chairman or upon the expiration of the 30-day review period with no action taken. Copies will be provided to signatories and notice of executed Memoranda of Agreement shall be published in the *FEDERAL REGISTER*. The Memorandum of Agreement should be included in the final environmental impact statement prepared pursuant to the National Environmental Policy Act.

(3) *Effect of Memorandum of Agreement.* Agreements duly executed in accordance with these regulations shall constitute the comments of the Council and shall evidence satisfaction of the Federal agency's responsibilities for the proposed undertaking under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations. Failure to carry out the terms of a Memorandum of Agreement requires that the Federal agency again request the Council's comments in accordance with these regulations. In such instances, until the Council issues its comments under these regulations the Agency Official shall not take or sanction any action or make any irreversible or irretrievable commitment that could result in an adverse effect with respect to National Register or eligible properties covered by the Agreement or that would foreclose the Council's consideration of modifications or alternatives to the proposed undertak-

ing that could avoid or mitigate the adverse effect.

(4) *Amendment of a Memorandum of Agreement.* If a signatory determines that the terms of the Memorandum of Agreement cannot be met or believes a change is necessary, the signatory shall immediately request the consulting parties to consider an amendment of the Agreement. Amendments will be executed in the same manner as the original Agreement.

(5) *Report on Memorandum of Agreement.* Within 90 days after carrying out the terms of the Agreement, the Agency Official shall report to all signatories on the actions taken.

(d) *Council Meetings.* The Council does not hold formal administrative hearings to develop its comments under these regulations. Reports and statements will be presented to the Council in open session in accordance with a prearranged agenda. Regular meetings of the Council generally occur quarterly.

(1) *Response to Recommendation for Consideration at Council Meeting.* Upon receipt of a notice and recommendation from the Executive Director concerning consideration of a proposed undertaking at a Council meeting, the Chairman shall determine within 15 days whether or not the undertaking will be considered and shall notify the Executive Director, the Agency Official, and the State Historic Preservation Officer of his decision. The Agency Official shall and the State Historic Preservation Officer should provide such reports and information as may be required to assist the Chairman in this determination.

If the Chairman decides against consideration of the undertaking at a Council meeting, a written summary of the undertaking, any recommendations for action by the Federal agency, and the decision shall be sent to each member of the Council. The Chairman shall also notify the Agency Official and the State Historic Preservation Officer and other parties in interest of the decision. If three members of the Council object within 10 days of the Chairman's decision, the undertaking shall be scheduled for consideration at

a Council meeting. Unless three members of the Council object, the chairman shall notify the Agency Official, the State Historic Preservation Officer, and other parties in interest in writing that the undertaking may proceed. Such notice shall be evidence of satisfaction of the Federal agency's responsibilities for the proposed undertaking under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations.

(2) *Decision to Consider the Undertaking.* When the Council will consider an undertaking at a meeting, the Chairman shall either designate five members as a panel to hear the matter on behalf of the full Council, or schedule the matter for consideration by the full Council.

(i) A panel shall consist of three non-Federal members, one as Chairman; and two Federal members, neither of whom shall represent the Federal agency involved in the undertaking. The panel shall meet to consider the undertaking within 30 days of the Chairman's decision unless the Agency Official agrees to a longer time.

(ii) The full Council will consider an undertaking at the next regularly scheduled meeting and no less than 60 days from the date of the Chairman's decision. In exceptional cases the Chairman may schedule the matter for consideration at a special meeting of the full Council to be held less than 60 days from the date of the decision.

(iii) Prior to any panel or full Council consideration of a matter, the Chairman will notify the Agency Official and the State Historic Preservation Officer, and other parties in interest of the date on which the undertaking will be considered. The Executive Director, the Agency Official, and the State Historic Preservation Officer shall prepare reports in accordance with § 800.13. Reports required from the Agency Official and the State Historic Preservation Officer must be received by the Executive Director at least 21 days before any meeting. Failure by the Federal agency to submit its report may result in postponement of consideration of the undertaking.

(3) *Meeting Notice.* Generally, 21 days notice of all meetings involving Council review of undertakings in accordance with these regulations shall be given by publication in the FEDERAL REGISTER. In exceptional cases, no less than 7 days notice shall be given by publication in the FEDERAL REGISTER.

(4) *Statements to the Council.* An agenda shall provide for oral statements from the Executive Director; the Agency Official; other parties in interest; the Secretary of the Interior; the State Historic Preservation Officer; representatives of national, State, or local units of government, and interested public and private organizations and individuals. Parties wishing to make oral remarks should notify the Executive Director at least two days in advance of the meeting. Parties wishing to have their statements distributed to Council members prior to the meeting should send copies of the statements to the Executive Director at least 7 days in advance.

(5) *Comments of the Council.* The written comments of the Council will be issued within 15 days after a meeting. Comments shall be made to the head of the Federal agency requesting comment or having responsibility for the undertaking. Immediately after the comments are made to the Federal agency, the comments of the Council will be forwarded to the President and Congress as a special report under authority of Section 202(b) of the Act and a notice of availability will be published in the FEDERAL REGISTER. The comments of the Council shall be available to the State Historic Preservation Officer, other parties in interest, and the public upon receipt of the comments by the head of the Federal Agency. The comments of the Council should be included in the final environmental impact statement prepared pursuant to the National Environmental Policy Act.

(6) *Review of Panel Decision.* Upon receipt of the panel's comments after a meeting, the head of the Federal agency shall take these comments into account in reaching a decision in regard to the proposed undertaking. If the agency determines not to follow

the panel's comments, the Agency Official shall immediately provide written notice of this decision to the Council. The Chairman may convene a meeting of the full Council to consider the matter within 30 days of receipt of such notice. In the interim period the Agency Official shall not take or sanction any action or make any irreversible or irretrievable commitment that could result in an adverse effect on the National Register or eligible property or that would foreclose the Council's consideration of modifications or alternatives to the proposed undertaking that could avoid or mitigate the adverse effect. If the Chairman decides against consideration of the proposed undertaking, the consulting parties shall be immediately notified and the undertaking may proceed.

(7) *Agency Action in Response to Council Comments.* Upon receipt of the Council's comments after a meeting, the head of the Federal agency shall take these comments into account in reaching a final decision in regard to the proposed undertaking. When a final decision regarding the proposed undertaking is reached by the Federal agency, the Agency Official shall submit a written report to the Council describing the actions taken by the Federal Agency in response to the Council's comments; the actions taken by other parties pursuant to the actions of the Federal Agency; and the effect that such actions will have on the affected National Register or eligible property. Receipt of this Report by the Chairman shall be evidence that the agency has satisfied its responsibilities for the proposed undertaking under Section 106 of the Act, Section 2(b) of the Executive Order and these regulations. The Council may issue a final report to the President and Congress under authority of Section 202(b) of the Act describing the actions taken by the agency in response to the Council's comments including recommendations for changes in Federal policy and programs, as appropriate.

(8) *Continuing Review Jurisdiction.* When the Council has met and commented upon an undertaking that will

require subsequent site-specific undertakings by a Federal agency, the Council's comment extends only to the undertaking as reviewed. The Agency Official shall ensure that subsequent actions related to the undertaking that have not been considered by the Council will be submitted to the Council for review in accordance with these regulations.

§ 800.7. Resources Discovered during construction.

(a) *Federal Agency Responsibilities.* If a Federal agency has previously met its responsibilities for identified National Register and eligible properties under Section 106 of the Act, Section 2(b) of the Executive Order, these regulations, and the National Environmental Policy Act (42 U.S.C. 4321 et seq.), and an Agency Official finds or is notified after construction has started that an undertaking will have an effect on a previously unidentified National Register or eligible property, the Federal agency may fulfill its responsibilities under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations, by complying with the requirements of the Archeological and Historic Preservation Act (16 U.S.C. 469(a)) as implemented by the Secretary, unless the Secretary determines that the significance of the property, the effect, and any proposed mitigation actions warrant Council consideration. If the Secretary determines the Council's comments are warranted, the Agency Official shall request the comments of the Council.

(b) *Council Comments.* Within 30 days of receipt of a request for comments from an Agency Official under this section, the Executive Director, with the concurrence of the Chairman, shall transmit comments on behalf of the Council to the Agency Official or the Chairman shall convene a meeting of the Council pursuant to § 800.6.

FEDERAL PROGRAM COORDINATION

§ 800.8 Programmatic Memoranda of Agreement.

(a) *Application.* At the request of an Agency Official, the Council will consider execution of a Programmatic Memorandum of Agreement to fulfill an agency's responsibilities under Section 106 of the Act and Section 2(b) of the Executive Order for a particular program or class of undertakings that would otherwise require numerous individual requests for comments under these regulations. Within 30 days after the request, the Executive Director will notify the agency official whether a Programmatic Memoranda of Agreement may be used. Generally, Programmatic Memorandum of Agreement may be used in the following types of situations:

(1) Non-site-specific undertakings, including Federal approval of State plans pursuant to Federal legislation, development of comprehensive or area-wide plans, agency recommendations for legislation, and the establishment or modification of regulations and planning guidelines.

(2) Undertakings that are repetitive in nature and have essentially the same effect on National Register or eligible properties.

(3) Programs that are designed to further the preservation and enhancement of National Register or eligible properties.

(4) Programs with statutory time limits for project application and approval that would not permit compliance with these regulations in the normal manner.

(b) *Consultation Process.* Upon determination by the Executive Director that a Programmatic Memorandum of Agreement is appropriate, the Agency Official and the Executive Director shall consult to develop a Programmatic Memorandum of Agreement. When the Agreement will affect a particular State or States, the appropriate State Historic Preservation Officer may be a party to the consultation. When the Agreement involves issues national in scope, the President of the National Conference of State Historic Preservation Officers or a designated representative may be a party to the consultation. The Executive Director may invite other parties, including

Other Federal agencies with responsibilities which may be affected by the Agreement, to participate in the consultation and may hold a Public Information Meeting (see § 800.6(b)(3)) on the proposed Agreement.

(c) *Preparation of the Agreement.* It shall be the responsibility of the Executive Director to prepare each Agreement. At least 30 days before executing an Agreement, the Council shall publish notice of the proposed Agreement in the FEDERAL REGISTER inviting comments from Federal, State, and local agencies and the public. The Council will make copies available to interested parties and to appropriate A-95 clearinghouses.

(d) *Execution of the Agreement.* After consideration of comments received and completion of any necessary revisions, the Executive Director, the Agency Official, and other parties, if appropriate, shall sign the Agreement and it shall be sent to the Chairman for ratification.

(e) *Chairman's Review.* Upon receipt of a signed Agreement, the Chairman shall review the Agreement and within 30 days shall take one of the following actions:

(1) Ratify the Agreement, at which time it will take effect.

(2) Submit the Agreement to the full Council for approval.

(3) Disapprove the Agreement.

(f) *Effect of the Agreement.* An approved Programmatic Memorandum of Agreement shall constitute the comments of the Council on all individual undertakings carried out pursuant to the terms of the Agreement and, unless otherwise provided by the Agreement, shall satisfy the agency's responsibilities under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations for all undertakings carried out in accordance with the Agreement.

(g) *Notice.* Notice of an approved Programmatic Agreement shall be published by the Council in the FEDERAL REGISTER. Copies shall be distributed through appropriate A-95 clearinghouses and the consulting parties shall make copies readily available to the public. The Programmatic Memo-

randum of Agreement should be included in the final environmental impact statement prepared pursuant to the National Environmental Policy Act.

(h) *Term.* Unless otherwise provided by the Agreement, duly executed Programmatic Memorandum of Agreement shall remain in effect until revoked by any one of the signatories. The Agency Official shall submit a report annually to the Executive Director and other signatories on all actions taken pursuant to the Agreement, including any recommendations for modification or termination of the Agreement. The Executive Director and other signatories shall review the report and determine whether modification or termination of the Agreement is appropriate.

§ 800.9 Coordination With Agency Requirements Under the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

Section 101(b)(4) of the National Environmental Policy Act (NEPA) declares that one objective of national environmental policy is to "preserve important historic, cultural, and natural aspects of our national heritage and maintain, wherever possible, an environment which supports diversity and variety of individual choice." In order to meet this objective, Federal agencies should coordinate NEPA compliance with the separate responsibilities of the National Historic Preservation Act and Executive Order 11593 to ensure that historic and cultural properties are given proper consideration in the preparation of environmental assessments and environmental impact statements. Agency obligations pursuant to the National Historic Preservation Act and Executive Order 11593 are independent from NEPA requirements and must be complied with even when an environmental impact statement is not required. Agencies should also be aware that the threshold for compliance with Section 106 and the Executive Order is less than that for preparation of an environmental impact statement. The former applies to any Federal, federally assist-

ed or federally licensed undertaking having an effect on a National Register or eligible property, while the latter extends only to major Federal actions significantly affecting the human environment. Where both NEPA and the Act or Executive Order are applicable, the Council on Environmental Quality, in its National Environmental Policy Act—Regulations (40 CFR 1502.25), directs that draft environmental impact statements prepared under Section 102(2)(C) of NEPA shall, to the fullest extent possible, be prepared with and integrated with other environmental impact analyses and related surveys and studies required by other authorities—such as the National Historic Preservation Act and Executive Order 11593. Preparation of a draft environmental impact statement may fulfill the requirements for reports and documentation under these authorities.

Circulation of the statement for comment pursuant to Section 102(2)(C) of NEPA shall constitute a request for Council comments under Section 800.4 of these regulations if Federal agencies so request in cover letters circulated with draft environmental impact statements. To coordinate the independent responsibilities of the Act and NEPA, Federal agencies should undertake compliance with these regulations whenever National Register or eligible properties may be affected by an undertaking. The following subsections indicate the appropriate means of coordinating the substance and timing of agency compliance with NEPA, Section 106, and Section 2(b). The Council will review agency environmental impact statements in accordance with this section. Adherence to these provisions will provide Federal agencies with an adequate record of the consideration of National Register and eligible properties during the planning process and will facilitate the production of a single document to meet the requirements of NEPA, Section 106, Executive Order 11593, and these regulations.

(a) It is normally intended that the Section 106/Executive Order com-

menting period run concurrently with the NEPA review process. Initiation of the consideration of historic and cultural resources should coincide with the initiation of other environmental reviews. To the maximum extent possible, agencies should reflect the status of compliance with Section 106, the Executive Order, and these regulations in all documents prepared under NEPA (environmental assessments, draft environmental impact statements, and final environmental impact statements) to provide the public with the fullest and most complete information available on effects on historic and cultural resources and alternatives to reduce those effects. If the commenting process under Section 106 and the Executive Order is not completed before the final environmental impact statement is issued, as with undertakings where subsequent design stage reviews occur, agencies should include the council's comments in any supplemental statement that is prepared pursuant to NEPA.

(b) Federal agencies should initiate compliance with Section 106 of the Act and the Executive Order in accordance with these regulations during initial environmental assessments that are undertaken to meet the requirements of NEPA and agency environmental procedures. In any event, this should occur no later than during the preparation of the draft environmental impact statement. Identification of National Register and eligible properties should be carried out in accordance with § 800.4 of these regulations. Potential effects should then be evaluated in accordance with the Criteria of Effect and Adverse Effect in § 800.3 of these regulations. The environmental assessment and the draft environmental impact statement should fully describe any National Register or eligible properties within the area of the undertaking's potential environmental impact and the nature of the undertaking's effect on them.

(c) If evaluation of the effect resulted in a Determination of No Effect or No Adverse Effect under § 800.4, that finding, along with supporting documentation, should be included or ref-

erenced in the environmental assessment and the draft environmental impact statement.

(d) If evaluation of the effect resulted in a Determination of Adverse Effect, that finding and a copy of the agency's request for the Council's comments in accordance with § 800.4(d)(1) of these regulations should be included in or referenced in the environmental assessment and the draft environmental impact statement. Agencies should include all available relevant information on National Register and eligible properties, the effects of the undertaking and alternative courses of action so that the draft environmental impact statement can be submitted as the preliminary case report under § 800.13(b) of these regulations. In some instances, the Section 106/Executive Order commenting process will be completed prior to issuance of a draft environmental impact statement. In that event, the comments of the Council should be included in the draft.

(e) Completion of the Council commenting process in accordance with these regulations should precede issuance of the final environmental impact statement. Comments of the Council obtained pursuant to § 800.6 or § 800.8 of these regulations should be incorporated into the final statement.

(f) The Council, in its review of environmental impact statements for undertakings that affect National Register or eligible properties, will look for evidence of proper compliance with Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations. The Council's views on the agency's compliance with those authorities will be included in its comments on environmental impact statements.

§ 800.10 Coordination with the Presidential Memorandum on Environmental Quality and Water Resources Management.

Federal Agencies with water resources responsibilities shall, not later than three months after publication of these regulations as finally adopted in the FEDERAL REGISTER, publish pro-

cedures to implement these regulations as required by the Presidential Memorandum on Environmental Quality and Water Resources Management. Each agency shall consult with the Council while developing its procedures and shall provide an opportunity for public review and comment on their proposed regulations. Agency procedures shall be effective when the Chairman approves them as conforming to the Presidential Memorandum and these regulations. Agency procedures must at a minimum include acceptable measures to prevent or mitigate losses of historic or cultural resources and provisions to insure that all projects not yet constructed will comply with these regulations. Additionally, such procedures shall prescribe a clear way to identify funding for environmental mitigation in an agency's appropriation requests. The procedures shall be approved by the Chairman within 60 days if they are consistent with these regulations. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are also encouraged to publish explanatory guidance for the procedures.

§ 800.11 Counterpart regulations.

Individual Federal agencies may, in accordance with Section 1(3) of the Executive Order, the President's Memorandum on Environmental Quality and Water Resources Management, and these regulations, choose to adopt counterpart regulations related to their specific programs and authorities to assist in meeting their responsibilities under Section 106 of the Act and Section 2(b) of the Executive Order.

(a) Responsibilities of individual Federal agencies pursuant to § 800.4 may be met by counterpart regulations jointly drafted by that agency and the Executive Director and approved by the Chairman. The Federal agency shall provide ample opportunity for public participation in the development of such counterpart regulations, including publication in the FEDERAL REGISTER as proposed and final rule making with provision for a minimum 60 day period for public com-

ment. Once in effect such counterpart regulations may, as appropriate, supersede the requirements of § 800.4. The Federal agency shall file approved counterpart regulations with the Council and shall make them readily available to the public.

(b) Counterpart regulations may include:

(1) A definition of undertaking as it applies to that agency's particular activities and programs,

(2) Methods to identify National Register and eligible properties for each class of undertakings,

(3) Methods to evaluate effects on National Register or eligible properties,

(4) Authorization for non-Federal participation in the consultation process, and

Standards, guidelines and other measures to ensure avoidance or mitigation of adverse effects on National Register and eligible properties for each class of undertakings.

(c) To the maximum extent possible, counterpart regulations developed pursuant to this section should be integrated with agency regulations for the National Environmental Policy Act.

OTHER PROVISIONS

§ 800.12 Investigation of threats to National Register and eligible properties.

(a) The Council is frequently advised by State Historic Preservation Officers and others of undertakings that threaten National Register or eligible properties and that appear to involve a Federal agency. In order to protect these properties, the Executive Director investigates these matters, generally by writing to the Federal agency that appears to be involved in the undertaking. Federal agencies should respond to these inquiries within 30 days. If there is Federal involvement in the undertaking, the agency shall fulfill its responsibilities under these regulations.

(b) The Council will exercise its authority to comment to Federal agencies under these regulations in certain special situations even though written

notice that an undertaking will have an adverse effect has not been received.

§ 800.13 Reports to the Council.

In order to meet responsibilities under these regulations, the Council prescribes that certain reports and documents be made available to it. The content of such reports is set forth below. The purpose is to provide sufficient information for the Council to evaluate the significance of affected National Register and eligible properties, understand the objectives and requirements of the undertaking, assess the effect in terms of the criteria specified in these regulations, and analyze the feasibility and prudence of alternatives. The Council further recognizes that the Act requires that National Register and eligible properties should be preserved "as a living part of our community life and development," and considers those elements in an undertaking that have relevance beyond historical and cultural concerns. To assist it in weighing the public interest, the Council seeks information not only bearing upon physical, esthetic, or environmental effects but also information concerning economic, social, and other benefits or detriments that will result from the undertaking. Agencies should consider these reports in the context of their compliance with the National Environmental Policy Act and incorporate their content in environmental assessments, draft environmental impact statements and final environmental impact statements as specified in § 800.9.

(a) *Documentation for Determination of No Adverse Effect.* Adequate documentation of a Determination of No Adverse Effect pursuant to § 800.4 should include the following information:

(1) A description of the agency's involvement with the proposed undertaking with citations of the agency's program authority and applicable implementing regulations, procedures, and guidelines;

(2) A description of the proposed undertaking including, as appropriate, photographs, maps, drawings, and specifications;

(3) A list of National Register and eligible properties that will be affected by the undertaking, including a description of the property's physical appearance and significance;

(4) A brief statement explaining why each of the Criteria of Adverse Effect (See Section 800.3) was found inapplicable;

(5) Written views of the State Historic Preservation Officer concerning the Determination of No Adverse Effect, if available; and,

(6) An estimate of the cost of the undertaking, identifying Federal and non-Federal shares.

(b) *Preliminary Case Reports.* Preliminary Case Reports should be submitted with a request for comments pursuant to Section 800.4 and should include the following information:

(1) A description of the agency's involvement with the proposed undertaking with citations of the agency's program authority, and applicable implementing regulations, procedures, and guidelines;

(2) The status of this project in the agency's approval process;

(3) The status of this project in the agency's National Environmental Policy Act compliance process and the target date for completion of all environmental responsibilities;

(4) A description of the proposed undertaking including, as appropriate, photographs, maps, drawings, and specifications;

(5) A description of the National Register or eligible properties affected by the undertaking, including a description of the properties' physical appearance and significance;

(6) A brief statement explaining why any of the Criteria of Adverse Effect (See § 800.3) apply;

(7) Written views of the State Historic Preservation Officer concerning the effect on the property, if available;

(8) The views of other Federal agencies, State and local governments, and the other groups or individuals, when known;

(9) A description and analysis of alternatives that would avoid the adverse effects;

(10) A description and analysis of alternatives that would mitigate the adverse effects; and,

(11) An estimate of the cost of the undertaking, identifying Federal and non-Federal shares;

(c) *Reports for Council Meeting.* Consideration of an undertaking by either the full Council or a panel pursuant to § 800.6 is based on reports from the Executive Director, the Agency Official, the Secretary of the Interior, the State Historic Preservation Officer, and others. The reports consist of the following:

(1) *Secretary of the Interior's Report.* The report from the Secretary shall include a verification of the legal and historical status of the property and an assessment of the historical, architectural, archeological, or cultural significance of the property.

(2) *Agency Official's Report.* The report from the Agency Official requesting comments shall include a general discussion and chronology of the proposed undertaking; an account of the steps taken to comply with the National Environmental Policy Act (NEPA); any relevant supporting documentation in studies that the agency has completed; an evaluation of the effect of the undertaking upon the property, with particular reference to the impact on the historical, architectural, archeological, and cultural values; steps taken or proposed by the agency to avoid or mitigate adverse effects of the undertaking; a thorough discussion of alternate courses of action; and an analysis comparing the advantages resulting from the undertaking with the disadvantages resulting from the adverse effects on National Register or eligible properties. The Agency Official shall arrange for the submission and presentation of any report by a grantee, permittee, licensee, or other party receiving Federal assistance or approval to carry out the undertaking.

(3) *Other Federal Agency Reports.* A report from any other Federal agency involved in the undertaking or a relat-

ed action that affects the property in question, including a general description and chronology of that agency's involvement and its relation to the undertaking being considered by the Council.

(4) *State Historic Preservation Officer's Report.* A report from the State Historic Preservation Officer should include an assessment of the significance of the property within the State preservation program; an evaluation of the effect of the undertaking upon the property and its specific components; an evaluation of known alternate courses of action; a discussion of present or proposed participation of State and local agencies or organizations in preserving or assisting in preserving the property; an indication of the support or opposition of units of government and public and private agencies and organizations within the State; and the recommendation of the State Historic Preservation Officer.

(5) *Executive Director's Report.* A report from the Executive Director shall include a description of the actions taken pursuant to these regulations, an evaluation of the effect of the undertaking on the property, a review of any known alternate courses of action, an analysis comparing the advantages resulting from the undertaking with the disadvantages resulting from the adverse effects on National Register or eligible properties and recommendations for Council action.

(6) *Other Reports.* The Council will consider other pertinent reports, statements, correspondence, transcripts, minutes, and documents received from any and all parties, public or private. Reports submitted pursuant to this section should be received by the Council at least 7 days prior to a Council meeting.

§ 800.14 Supplementary Guidance.

The Executive Director may issue further guidance to interpret these regulations to assist Federal agencies and State Historic Preservation Officers in meeting their responsibilities. The guidelines are for informational purposes only and will be published in

the FEDERAL REGISTER and will be readily available to the public.

§ 800.15 Public Participation.

The Council encourages maximum public participation in the review process under these regulations. The Council, Federal agencies, and State Historic Preservation Officers should seek assistance from the public including other Federal agencies, units of local and State government, public and private organizations, individuals and federally recognized Indian tribes in evaluating National Register and eligible properties, determining effect, and developing alternatives to avoid or mitigate an adverse effect. The public has considerable information available that could assist Federal agencies, the State Historic Preservation Officer and the Council in meeting their responsibilities under these regulations. The Council especially urges that Federal agencies make every effort to involve grantees, permittees, licensees, and other parties in interest in the consultation process. To this end, the Council, the Agency Official, and the State Historic Preservation Officer should:

(a) Make readily available, to the extent possible, documents, materials, and other information and data concerning the undertaking and effects on National Register and eligible properties that may be of interest to the public. Such information should be made available within the limits of the Freedom of Information Act (5 U.S.C. 552) and need not necessarily include information on budget, financial, personnel, and other proprietary matters or the specific location of archeological sites. Material to be made available to the public by the agency and the State Historic Preservation Officer should be provided to the public at the minimum cost permissible.

(b) Make the public aware of Public Information Meetings (§ 800.6(b)(3)), full or panel Council meetings (§ 800.6(d)), and the availability of other information related to the review process under these regulations such as a Determination of No Effect, a Determination of No Adverse Effect,

a Memorandum of Agreement (See § 800.6(c)) or a Programmatic Memorandum of Agreement (See § 800.8). The purpose of such notice is to inform persons, agencies, and organizations that may be interested or affected by the proposed undertaking of the opportunity to participate in the review process under these regulations. This may include:

(1) Mailing notice to those who have requested it on an individual undertaking or Programmatic Memorandum of Agreement.

(2) Use of notice in local newspaper, local media, and newsletters that may

be expected to reach potentially interested persons.

(3) Posting of notice on- and off-site in the area where the undertaking is proposed to be located.

(c) Solicit relevant information from the public during the identification of National Register and eligible properties, the evaluation of effects, and the consideration of alternatives.

(d) Hold or sponsor public meetings on proposed undertakings and make diligent efforts to include the public.

[FR Doc. 79-3248 Filed 1-29-79; 8:45 am]

Archaeological Resources Protection Act of 1979

PUBLIC LAW 96-95—OCT. 31, 1979

Public Law 96-95
96th Congress

An Act

To protect archaeological resources on public lands and Indian lands, and for other purposes.

Oct. 31, 1979
[H.R. 1825]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Archaeological
Resources
Protection Act of
1979.

SHORT TITLE

SECTION 1. This Act may be cited as the "Archaeological Resources Protection Act of 1979".

16 USC 470aa
note.

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

16 USC 470aa.

(1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;

(2) these resources are increasingly endangered because of their commercial attractiveness;

(3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and

(4) there is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(b) The purpose of this Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act.

DEFINITIONS

SEC. 3. As used in this Act—

16 USC 470bb.

(1) The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological

context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

(2) The term "Federal land manager" means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(3) The term "public lands" means—

(A) lands which are owned and administered by the United States as part of—

- (i) the national park system,
- (ii) the national wildlife refuge system, or
- (iii) the national forest system; and

(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution;

(4) The term "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688).

(6) The term "person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(7) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

43 USC 1601
note.

EXCAVATION AND REMOVAL

SEC. 4. (a) Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this Act, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

Permit
application.
16 USC 470cc.

(b) A permit may be issued pursuant to an application under subsection (a) if the Federal land manager determines, pursuant to uniform regulations under this Act, that—

(1) the applicant is qualified, to carry out the permitted activity,

(2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interest,

(3) the archaeological resources which are excavated or removed from public lands will remain the property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution, and

(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(c) If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9.

(d) Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this Act, as the Federal land manager concerned deems necessary to carry out the purposes of this Act.

(e) Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this Act and other law applicable to the permitted activity.

(f) Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of subsection (a), (b), or (c) of section 6. Any such permit may be revoked by such Federal land manager upon assessment of a civil penalty under section 7 against the permittee or upon the permittee's conviction under section 6.

(g)(1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section.

(2) In the case of any permits for the excavation or removal of any archaeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

(h)(1) No permit or other permission shall be required under the Act of June 8, 1906 (16 U.S.C. 431-433), for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906, shall remain in effect according to its terms and conditions following the enactment of this Act. No permit under this Act shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before the date of the enactment of this Act which remains in effect as provided in this paragraph, and nothing in this Act shall modify or affect any such permit.

(i) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966 (80 Stat. 917, 16 U.S.C. 470f).

(j) Upon the written request of the Governor of any State, the Federal land manager shall issue a permit, subject to the provisions of subsections (b)(3), (b)(4), (c), (e), (f), (g), (h), and (i) of this section for the purpose of conducting archaeological research, excavation, removal, and curation, on behalf of the State or its educational institutions, to such Governor or to such designee as the Governor deems qualified to carry out the intent of this Act.

CUSTODY OF RESOURCES

SEC. 5. The Secretary of the Interior may promulgate regulations providing for—

Regulations.
16 USC 470dd.

(1) the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions, of archaeological resources removed from public lands and Indian lands pursuant to this Act, and

(2) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 (16 U.S.C. 469-469c) or the Act of June 8, 1906 (16 U.S.C. 431-433).

Any exchange or ultimate disposition under such regulation of archaeological resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe which owns or has jurisdiction over such lands. Following promulgation of regulations under this section, notwithstanding any other provision of law, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this Act.

PROHIBITED ACTS AND CRIMINAL PENALTIES

SEC. 6. (a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4, a permit referred to in section 4(h)(2), or the exemption contained in section 4(g)(1).

16 USC 470ee.

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

(1) the prohibition contained in subsection (a), or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year, or both: *Provided, however,* That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of \$5,000, such person shall be fined not more than \$20,000 or impris-

oned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than \$100,000, or imprisoned not more than five years, or both.

(e) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

(f) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to the date of the enactment of this Act.

(g) Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground.

CIVIL PENALTIES

16 USC 470ff.

SEC. 7. (a)(1) Any person who violates any prohibition contained in an applicable regulation or permit issued under this Act may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

(A) the archaeological or commercial value of the archaeological resource involved, and

(B) the cost of restoration and repair of the resource and the archaeological site involved.

Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person. The amount of any penalty assessed under this subsection for any violation shall not exceed an amount equal to double the cost of restoration and repair of resources and archaeological sites damaged and double the fair market value of resources destroyed or not recovered.

(3) No penalty shall be assessed under this section for the removal of arrowheads located on the surface of the ground.

(b)(1) Any person aggrieved by an order assessing a civil penalty under subsection (a) may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such a person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (1), or

(B) after a court in an action brought under paragraph (1) has entered a final judgment upholding the assessment of a civil penalty,

the Federal land managers may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

(c) Hearings held during proceedings for the assessment of civil penalties authorized by subsection (a) shall be conducted in accordance with section 554 of title 5 of the United States Code. The Federal land manager may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Subpoenas.

Witness fees.

REWARDS; FORFEITURE

SEC. 8. (a) Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay from penalties and fines collected under sections 6 and 7 an amount equal to one-half of such penalty or fine, but not to exceed \$500, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

16 USC 470gg.

(b) All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 6 occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon—

- (1) such person's conviction of such violation under section 6,
- (2) assessment of a civil penalty against such person under section 7 with respect to such violation, or
- (3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 6 involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe involved of all penalties collected pursuant to section 7 and for the transfer to such Indian or Indian tribe of all items forfeited under this section.

CONFIDENTIALITY

16 USC 470hh.

SEC. 9. (a) Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 of the United States Code or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—

5 USC 551.

(1) further the purposes of this Act or the Act of June 27, 1960 (16 U.S.C. 469-469c), and

(2) not create a risk of harm to such resources or to the site at which such resources are located.

(b) Notwithstanding the provisions of subsection (a), upon the written request of the Governor of any State, which request shall state—

(1) the specific site or area for which information is sought,

(2) the purpose for which such information is sought,

(3) a commitment by the Governor to adequately protect the confidentiality of such information to protect the resource from commercial exploitation,

the Federal land manager concerned shall provide to the Governor information concerning the nature and location of archaeological resources within the State of the requesting Governor.

REGULATIONS; INTERGOVERNMENTAL COORDINATION

Rules and
regulations.
16 USC 470ii.

SEC. 10. (a) The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996). Each uniform rule or regulation promulgated under this Act shall be submitted on the same calendar day to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives, and no such uniform rule or regulation may take effect before the expiration of a period of ninety calendar days following the date of its submission to such Committees.

Submittal to
congressional
committees.

Rules and
regulations.

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act.

COOPERATION WITH PRIVATE INDIVIDUALS

16 USC 470jj.

SEC. 11. The Secretary of the Interior shall take such action as may be necessary, consistent with the purposes of this Act, to foster and improve the communication, cooperation, and exchange of information between—

(1) private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act, and

(2) Federal authorities responsible for the protection of archaeological resources on the public lands and Indian lands and

professional archaeologists and associations of professional archaeologists.

In carrying out this section, the Secretary shall, to the extent practicable and consistent with the provisions of this Act, make efforts to expand the archaeological data base for the archaeological resources of the United States through increased cooperation between private individuals referred to in paragraph (1) and professional archaeologists and archaeological organizations.

SAVINGS PROVISIONS

SEC. 12. (a) Nothing in this Act shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

16 USC 470kk.

(b) Nothing in this Act applies to, or requires a permit for, the collection for private purposes of any rock, coin, bullet, or mineral which is not an archaeological resource, as determined under uniform regulations promulgated under section 3(1).

(c) Nothing in this Act shall be construed to affect any land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land.

REPORT

SEC. 13. As part of the annual report required to be submitted to the specified committees of the Congress pursuant to section 5(c) of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469-469a), the Secretary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this Act, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this Act. Such report shall include a brief summary of the actions undertaken by the Secretary under section 11 of this Act, relating to cooperation with private individuals.

16 USC 470ll.

Approved October 31, 1979.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-311 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 96-179 accompanying S. 490 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 125 (1979):

July 9, considered and passed House.

July 30, considered and passed Senate, amended, in lieu of S. 490.

Oct. 12, House agreed to Senate amendments with an amendment.

Oct. 17, Senate concurred in House amendment.



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Bureau of Land Management
Alaska

